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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 492

GENERAL GAS AND ELECTRIC CORPORATION,
PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 1, 1938.

CERTIORARI GRANTED JANUARY 3, 1939.

SUPREME COURT OF THE UNITED STATES

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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[fol. 1]

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 52,639

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DOCKET ENTRIES

Appearances:

For Taxpayer: Francis J. Sweeney, Esq.
For Comm'r: Chester Gwinn, Esq.

Transferred to Mr. Disney 6/30/36

1931.

Feb. 9. Petition received and filed. Taxpayer notified. (Fee paid.)
" 9. Copy of Petition served on General Counsel.
Mar. 30. Answer filed by General Counsel.
Apr. 3. Copy of answer served on taxpayer. General Counsel.
" 25. Reply to answer filed by taxpayer. March 27, 1931 copy served.

1932.

Sept. 21. Motion for a continuance and to consolidate with dockets 49,079, 49,080, 52,679, 52,680 filed by taxpayer. September 22, 1932 granted and continued to Spring Term of 1933.

1934.

Dec. 8. Hearing set January 28, 1935.

[fol. 2]

1935.

Jan. 10. Stipulation of facts filed.
" 28. Hearing had before Mr. Seawell on merits. On motion of parties Docket 59,470 consolidated

with 59,469, 52, 639, 52,680 and 49,079. Submitted on stipulation of facts heretofore filed. Petitioner's brief due in 60 days (March 29, 1935). Respondent's brief due 30 days thereafter. Petitioner's reply due in 15 days.

Feb. 1. Transcript of hearing of January 28, 1935 filed.

Mar. 29. Brief filed by taxpayer. March 29, 1935 copy served.

Apr. 24. Brief filed by General Counsel.

May 9. Reply brief filed by taxpayer. May 10, 1935 copy served.

1937.

June 3. Memorandum opinion rendered, Richard L. Disney, Division 4. Decision will be entered under Rule 50.

Aug. 13. Motion for redetermination filed by General Counsel.

" 16. Hearing set September 8, 1937 on motion. (Settlement.)

" 20. Consent to settlement filed by taxpayer.

" 24. Decision entered, Bolon B. Turner, Division 8.

Nov. 20. Petition for review by United Circuit Court of Appeals (Second) with assignments of error filed by taxpayer.

" 20. Proof of service filed by taxpayer.

" 20. Praecipe with proof of service thereon filed.

[fol. 3] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 52,639

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

PETITION—Filed February 9, 1931

General Gas & Electric Corporation hereby petitions for a redetermination of an asserted deficiency and alleges as follows:

I. The Commissioner of Internal Revenue, the respondent herein, by letter dated December 13, 1930, and bearing the

bureau reference or symbols IT:AR:A-8-60D:JES notified your petitioner by registered mail, of a deficiency in income taxes with respect to the income tax imposed by the Revenue Act of 1926.

II. Your petitioner was at all times hereinafter mentioned, a corporation duly organized and existing under the laws of the State of Delaware and was engaged in the business of holding securities.

III. Upon information and belief the notice of deficiency, a copy of which is attached hereto, made a part hereof as [fol. 4] though here set forth in full and marked Exhibit "A," was mailed to your petitioner on December 13, 1930.

IV. The taxes in controversy are income taxes for the fiscal period beginning January 1, 1926, and ending December 31, 1926, in the amount of $163,615.76.

V. The respondent's determination of income taxes set forth in said deficiency letter is based on the following errors:

A. That the time within which the respondent might lawfully determine, assess and/or collect a deficiency in federal income taxes for the aforesaid fiscal period, has expired, with respect to your petitioner.

B. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by failing to consolidate the taxable net incomes of your petitioner and its affiliated taxpayers, enumerated in Exhibit "B" attached hereto and made a part hereof as though here set forth in full for the period therein stated.

C. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by failing to consolidate the accounts of your petitioner with the accounts of the taxpayers engaged in related trades or businesses, owned or controlled directly or indirectly by the same interests, as more fully appears [fol. 5] from Exhibit "C" attached hereto and made a part hereof as though here set forth in full.

D. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by adding to or failing to deduct from the

taxable net incomes of its affiliated taxpayers, the following items:

Item	Name of Affiliated Taxpayer	Description of Item

The within assignments of error are set forth on the next two succeeding pages.

The term "affiliated taxpayers" when used herein is intended to, and shall also embrace the taxpayers engaged in related trades or businesses enumerated in "Exhibit 'C'" as more fully appears from paragraph V. C. as well as the taxpayers enumerated in "Exhibit 'B'."

Item	Name of Affiliated Taxpayer	Description of Item	
1	The General Finance Corporation	Profit on sale of stocks and bonds	$5,080.00
2	Saylorsburg Light & Power Co	Depreciation	1,537.02
3	Reading Transit Company	Taxes	42,958.94
4	Reading Transit Company	Depreciation	82,327.43
5	Oley Valley Railway Company	Taxes	962.38
6	Oley Valley Railway Company	Depreciation	12,302.13
7	Hamburg Gas & Electric Company	Taxes	11,412.90
8	Hamburg Gas & Electric Company	Amortization	75.24
9	Hamburg Gas & Electric Company	Depreciation	8,793.03
10	Topton Electric Light & Power Co	Taxes	2,950.00
11	Weisenberg Township Electric Light and Power Company	Taxes	85.00

[fol. 6]

12	Ortanna Electric Light & Power Co	Taxes	264.98
13	Ortanna Electric Light & Power Co	Depreciation	2,505.80
14	Birdsboro Electric Company	Taxes	1,775.00
15	French Creek Electric Company	Loss-Prior Period	1,498.10
16	Bernville Light, Heat & Power Co	Taxes	439.23
17	Bernville Light, Heat & Power Co	Depreciation	1,285.01
18	Berks-Lehigh Electric Company	Taxes	387.12
19	Berks-Lehigh Electric Company	Depreciation	1,552.72
20	Newtown Gas Company	Taxes	861.68
21	New Jersey Power and Light Company	Bad Debts	2,925.00
22	New Jersey Power and Light Company	Taxes	35,101.22
23	New Jersey Power and Light Company	Depreciation	223,965.89
24	New Jersey Power and Light Company	Obsolescence	89,314.53
25	Washington Gas Company	Depreciation	2,814.47
26	Washington Gas Company	Bad Debts	164.38
27	Washington Gas Company	Discount on Bonds	5,817.03
28	Washington Gas Company	Miscellaneous Adjustments	336.77
29	Washington Gas Company	Taxes	293.68
30	Boonton Gas Light & Improvement Co.	Depreciation	1,374.22
31	Binghamton Light, Ht. & Pr. Co.	Taxes	46,281.73
32	Binghamton Light, Ht. & Pr. Co.	Loss on sale of assets	17,827.05
33	Binghamton Light, Ht. & Pr. Co.	Depreciation	149,540.93
34	Northern Pennsylvania Power Company	Taxes	33,558.36
35	Northern Pennsylvania Power Company	Amortization	115,422.19
36	Northern Pennsylvania Power Company	Loss on sale of capital assets	2,462.52

Item	Name of Affiliated Taxpayer	Description of Item	
37	Northern Pennsylvania Power Company	Obsolescence	$73,609.39
38	Northern Pennsylvania Power Company	Depreciation	83,039.84
39	Sayre Electric Company	Depreciation	8,798.09
[fol. 7]			
40	Sayre Electric Company	Taxes	3,964.35
41	Susquehanna Light and Power Company	Taxes	2,144.61
42	Broad River Power Company	Amortization	1,107.79
43	Broad River Power Company	Taxes	16,206.74
44	Broad River Power Company	Obsolescence	44,528.58
45	Broad River Power Company and/or Columbia Rwy. Gas & Elec. Co.	Depreciation	380,951.44
46	Columbia Railway Gas & Electric Co.	Loss, property sold and abandoned	20,595.66
47	Columbia Railway Gas & Electric Co.	Obsolescence	113,960.34
48	Blue Ridge Power Company	Depreciation	89,146.97
49	Blue Ridge Power Company	Amortization	12,039.58
50	Blue Ridge Power Company	Miscellaneous unallocated items	5,483.53
51	Blue Ridge Power Company	Net Loss 4 mos. ended 4/30/26	62,762.17
52	Blue Ridge Power Company	Taxes	79.00
53	Manufacturers Power Company	Depreciation	49,206.54
54	Manufacturers Power Company	Amortization	7,021.55
55	Manufacturers Power Company	Net Loss 4 mos. ended 4/30/26	22,267.78
56	Melrose Power & Manufacturing Co.	Depreciation	1,726.71
57	Melrose Power & Manufacturing Co.	Taxes	4,438.32
58	North Carolina Public Service Co.	Injuries and Damages	2,400 00
59	North Carolina Public Service Co.	Taxes	38,974.84
60	North Carolina Public Service Co.	Loss on sale of assets	10,805.08
61	North Carolina Public Service Co.	Bad Debts	8,904.94
62	North Carolina Public Service Co.	Amortization	190,306.42
63	Winston-Salem Gas Company	Net Loss	1,373.78
64	Winston-Salem Gas Company	Period Adjustment	974.59
65	Winston-Salem Gas Company	Taxes	3,785.80
66	North Penn Power Company	Taxes	700.17

[fol. 8] E. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by adding thereto or failing to deduct therefrom as follows:

1. Profit on sale of stock of affiliated companies $1,350.00
2. Expenses 7,500.00
3. Profit on sale of subsidiary companies' bonds 21,900.00

F. That the respondent erroneously and illegally determined, computed, allocated, charged and/or credited the taxes paid by or determined against and/or assessed against your petitioner and/or its affiliated taxpayers and/or taxpayers engaged in related trades or businesses.

VI. Facts upon which your petitioner relies as sustaining the aforesaid assignments of error are as follows:

A. That your petitioner filed its federal income tax return for the calendar year 1926 on June 15, 1927.

B. That your petitioner was affiliated with the taxpayers enumerated in Exhibit "B" for the periods therein stated.

1. Your petitioner and/or its affiliated taxpayers owned at least 95% of the stock, within the meaning and contemplation of the law, of the taxpayers enumerated in said Exhibit [fol. 9] "B" for the periods therein stated.

2. That your petitioner and said taxpayers enumerated in Exhibit "B" filed a consolidated income tax return for the calendar year 1926.

C. That your petitioner and the taxpayers, enumerated in Exhibit "C" attached hereto and made a part hereof as though here set forth in full, were owned or controlled, directly or indirectly by the same interests.

1. That your petitioner and the taxpayers enumerated in Exhibit "C," were at all times herein mentioned, engaged in a related trade or business, i. e., ownership and operation of public utilities.

2. That your petitioner and the taxpayers enumerated in Exhibit "C" filed a consolidated return for the calendar year 1926.

3. That the accounts of your petitioner and of said taxpayers enumerated in Exhibit "C" are so related that it is necessary, in order to make an accurate distribution or apportionment of gains, profits, income, deductions or capital between or among them, to consolidate their accounts.

D. Affiliated taxpayers—Facts as to erroneous and illegal increases in taxable net incomes of affiliated taxpayers by the respondent:

[fol. 10] 1. General Finance Corporation—The respondent has erroneously and illegally included in consolidated taxable net income, profit on sale of subsidiary companies' stock in the amount of $5,080.00. This does not constitute taxable net income and it was erroneous and illegal to include it as such.

2. Saylorsburg Light and Power Company—That the depreciable property of said taxpayer for the calendar year 1926 was a sum certain, sufficient to constitute the amount

of $2,775.95 as a fair and reasonable allowance for depreciation.

3. Reading Transit Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $40,005.31 of which only $2,953.63 was allowed by the respondent.

4. Reading Transit Company—That the depreciable property of said taxpayer for the calendar year 1926 was a sum certain, sufficient to constitute the amount of $184,426.00 as a fair and reasonable allowance for depreciation.

5. Oley Valley Railway Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $730.25 of which only $232.13 was allowed by the respondent.

[fol. 11] 6. Oley Valley Railway Company—That the depreciable property of said taxpayer for the calendar year 1926 was a sum certain, sufficient to constitute the amount of $20,000.00 as a fair and reasonable allowance for depreciation.

7. Hamburg Gas and Electric Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $2,635.07 of which only $8,777.83 was allowed by the respondent.

8. Hamburg Gas and Electric Company—Said affiliated taxpayer incurred during 1926 interest and/or ordinary and necessary expense in the nature of amortization amounting to $846.72 of which only $771.48 was allowed by the respondent.

9. Hamburg Gas and Electric Company—That the depreciable property of said taxpayer for the calendar year 1926 was a sum certain, sufficient to constitute the amount of $16,131.40 as a fair and reasonable allowance for depreciation.

10. Topton Electric Light and Power Company—Said affiliated taxpayer paid and incurred during calendar year 1926 taxes properly deductible in determining taxable net

income amounting to $823.99 of which only $2,126.01 was allowed by the respondent.

[fol. 12] 11. Weisenberg Township Electric Light and Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $129.99 of which only $44.99 was allowed by the respondent.

12. Ortanna Electric Light and Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $249.69 of which only $15.29 was allowed by the respondent.

13. Ortanna Electric Light and Power Company—That the depreciable property of said taxpayer for the calendar year 1926 was a sum certain, sufficient to constitute the amount of $2,505.80 as a fair and reasonable allowance for depreciation.

14. Birdsboro Electric Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $449.15 of which only $1,325.85 was allowed by the respondent.

15. French Creek Electric Company—That for the fiscal period beginning January 1, 1926, and ending May 31, 1926, said taxpayer incurred a loss of $1,498.10 which the respondent failed to allow as a deduction in determining taxable net [fol. 13] income for the fiscal period beginning June 1, 1926, and ending December 31, 1926.

16. Bernville Light, Heat and Power Company—Said affiliated taxpayer paid and incurred during the fiscal period beginning July 1, 1926, and ending December 31, 1926, taxes properly deductible in determining taxable net income amounting to $153.98 of which only $285.25 was allowed by the respondent.

17. Bernville Light, Heat and Power Company—That the depreciable property of the said taxpayer for the period beginning July 1, 1926, and ending December 31, 1926, was a sum certain, sufficient to constitute the amount of $1,285.01 as a fair and reasonable allowance for depreciation.

18. Berks-Lehigh Electric Company—Said affiliated taxpayer paid and incurred during the period beginning July

1, 1926, and ending December 31, 1926, taxes properly deductible in determining taxable net income amounting to $33.87 of which only $353.25 was allowed by the respondent.

19. Berks-Lehigh Electric Company—That the depreciable property of said taxpayer for the period beginning July 1, 1926, and ending December 31, 1926, was a sum certain, sufficient to constitute the amount of $1,552.72 as a fair and reasonable allowance for depreciation.

[fol. 14] 20. Newton Gas Company—Said affiliated taxpayer paid and incurred during the period beginning January 1, 1926, and ending November 30, 1926, taxes properly deductible in determining taxable net income amounting to $1,662.51 of which only $800.83 was allowed by the respondent.

21. New Jersey Power and Light Company—That during the calendar year 1926 said taxpayer charged operating expenses and credited reserve for uncollectible accounts in the amount of $8,425.00. A fair and reasonable allowance for Bad Debts would not be less than this amount.

22. New Jersey Power and Light Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $86,649.41 of which only $51,548.19 was allowed by the respondent.

23. New Jersey Power and Light Company—That the depreciable property of said taxpayer for the calendar year 1926 was a sum certain, sufficient to constitute the amount of $223,965.89 as a fair and reasonable additional allowance for depreciation.

24. New Jersey Power and Light Company—That the respondent determined that the correct deduction for obso-[fol. 15]lescence sustained during the calendar year 1926 amounted to $127,883.61, that he inadvertently disallowed $89,314.53 of this amount in making his adjustment for depreciation so both the deduction for depreciation and obsolescence was included as a deduction on the return in one figure and in making his adjustment for depreciation he presumed that the entire amount represented a deduction for depreciation.

25. Washington Gas Company—That the depreciable property of said taxpayer for the period beginning January

1, 1926, and ending November 30, 1926, was a sum certain, sufficient to constitute the amount of $2,814.47 as a fair and reasonable allowance for depreciation.

26. Washington Gas Company—That the respondent erroneously and illegally increased taxable net income by adding thereto $164.38 provision for bad debts. A fair and reasonable allowance for Bad Debts would not be less than this amount.

27. Washington Gas Company—That said taxpayer did not realize a taxable profit in the retirement of its bonds at a discount of $5,817.03.

28. Washington Gas Company—That the respondent erroneously and illegally increased taxable net income by adding thereto $336.77 determined to be recovery of bad [fol. 16] debts. Said adjustment was made in order to bring the accounts receivable ledgers in agreement with the accounts receivable control. This item does not constitute taxable net income for the period beginning January 1, 1926, and ending November 30, 1926.

29. Washington Gas Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $960.32 of which only $666.64 was allowed by the respondent.

30. Boonton Gas Light & Improvement Company—That the depreciable property of said taxpayer for the period beginning January 1, 1926, and ending March 31, 1926, was a sum certain, sufficient to constitute the amount of $1,374.22 as a fair and reasonable allowance for depreciation.

31. Binghamton Light, Heat and Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $86,832.79 of which only $40,551.06 was allowed by the respondent.

32. Binghamton Light, Heat and Power Company—That the respondent erroneously and illegally increased taxable net income by disallowing $17,828.05 of a total loss of $44,666.49 on the sale of miscellaneous capital assets.

[fol. 17] 33. Binghamton Light, Heat and Power Company—That the depreciable property of said taxpayer for the

calendar year 1926 was a sum certain, sufficient to constitute the amount of $309,058.27 as a fair and reasonable allowance for depreciation.

34. Northern Pennsylvania Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $10,571.10 of which only $23,987.26 was allowed by the respondent.

35. Northern Pennsylvania Power Company—That said taxpayer incurred during the calendar year 1926 interest expense and/or ordinary and necessary expense by reason of amortization amounting to $115,422.19 which the respondent erroneously and illegally failed to allow.

36. Northern Pennsylvania Power Company—That the respondent erroneously and illegally increased taxable net income by disallowing $2,462.52 of a total loss of $10,616.44 incurred during the calendar year 1926 on the sale of miscellaneous capital assets.

37. Northern Pennsylvania Power Company—Said affiliated taxpayer by reason of abandonment and changes of its operating properties sustained or incurred obsolescence during 1926 amounting to not less than $73,609.39.

[fol. 18] 38. Northern Pennsylvania Power Company—That the depreciable property of said taxpayer for the calendar year 1926 was a sum certain, sufficient to constitute the amount of $123,222.21 as a fair and reasonable allowance for depreciation.

39. Sayre Electric Company—That the depreciable property of said taxpayer for the period beginning January 1, 1926, and ending June 30, 1926, was a sum certain, sufficient to constitute the amount of $17,940.10 as a fair and reasonable allowance for depreciation.

40. Sayre Electric Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes amounting to $1,628.93 of which only $2,335.00 was allowed by the respondent in determining taxable net income.

41. Susquehanna County Light and Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes amounting to $1,511.72 of which only $632.89 was allowed by the respondent in determining taxable net income.

42. Broad River Power Company—That said taxpayer incurred during the calendar year 1926 interest and/or ordinary and necessary expense in the nature of amortization amounting to $1,107.79 which the respondent failed to allow in determining taxable net income.

[fol. 19] 43. Broad River Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes amounting to $182,915.35 of which only $166,708.61 was allowed by the respondent in determining taxable net income.

44. Broad River Power Company—Said taxpayer by reason of abandonments and changes in its operating properties sustained and incurred obsolescence during 1926 amounting to not less than $44,528.58.

45. Broad River Power Company and/or Columbia Railway Gas & Electric Company—That the depreciable property of Broad River Power Company and/or Columbia Railway Gas & Electric Company for the calendar year 1926 was a sum certain, sufficient to constitute the amount of $564,723.26 as a fair and reasonable allowance for depreciation.

46. Columbia Railway Gas and Electric Company—That during the calendar year 1926 said taxpayer sustained or incurred obsolescence amounting to not less than $20,595.66 by reason of abandonment of street cars which the respondent failed to allow as a deduction in determining taxable net income.

47. Columbia Railway Gas and Electric Company—Said taxpayer, by reason of abandonments of street car lines sustained or incurred obsolescence during 1926 amounting [fol. 20] to not less than $113,960.34 which the respondent failed to allow as a deduction in determining taxable net income.

48. Blue Ridge Power Company—That the depreciable property of said taxpayer for the period beginning May 1, 1926, and ending December 31, 1926, was a sum certain, sufficient to constitute the amount of $89,146.97 as a fair and reasonable allowance for depreciation.

49. Blue Ridge Power Company—That said taxpayer incurred interest and/or ordinary and necessary expense in

the nature of amortization amounting to $12,039.58 during the period beginning May 1, 1926, and ending December 31, 1926, which the respondent failed to allow as a deduction in determining taxable net income.

50. Blue Ridge Power Company—That the respondent erroneously and illegally increased taxable net income of $5,483.53 by disallowing miscellaneous unallocated items. Upon information and belief the above amount constituted ordinary and necessary expense properly deductible in determining taxable net income for the period beginning May 1, 1926, and ending December 31, 1926.

51. Blue Ridge Power Company—That during the period beginning January 1, 1926, and ending April 30, 1926, said [fol. 21] taxpayer sustained a net loss of $62,762.17. Said net loss is a proper deduction in determining taxable net income for the period beginning May 1, 1926, and ending December 31, 1926.

52. Blue Ridge Power Company—Said affiliated taxpayer paid and incurred during the period beginning May 1, 1926, and ending December 31, 1926, taxes amounting to $16,835.43 of which $16,914.43 was allowed by the respondent in determining taxable net income.

53. Manufacturers Power Company—That the depreciable assets of said taxpayer for the period beginning May 1, 1926, and ending December 31, 1926, was a sum certain, sufficient to constitute the amount of $49,206.54 as a fair and reasonable allowance for depreciation.

54. Manufacturers Power Company—That the respondent erroneously and illegally increased taxable net income by adding thereto determined over deduction of amortization of Debt Discount and Expense amounting to $7,021.55. Upon information and belief no such deduction was made on the return as filed.

55. Manufacturers Power Company—That during the period beginning January 1, 1926, and ending April 30, 1926, said taxpayer sustained a net loss of $22,267.78. Said net loss is a proper deduction in determining taxable net [fol. 22] income for the period beginning May 1, 1926, and ending December 31, 1926.

56. Melrose Power Company—That the depreciable property of said taxpayer for the period beginning October 1,

1926, and ending December 31, 1926, was a sum certain, sufficient to constitute the amount of $1,726.71 as a fair and reasonable allowance for depreciation.

57. Melrose Power Company—Said affiliated taxpayer paid and incurred during the period beginning October 1, 1926, and ending December 31, 1926, taxes amounting to $447.00 of which only $3,991.32 was allowed by the respondent in determining taxable net income.

58. North Carolina Public Service Company—That the respondent erroneously and illegally increased taxable net income by adding thereto additions to the reserve for injuries and damages amounting to $2,400.00. Upon information and belief the foregoing amount was not deducted from income on the return as filed.

59. North Carolina Public Service Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes amounting to $89,785.41 of which only $50,810.57 was allowed by the respondent in determining taxable net income.

[fol. 23] 60. North Carolina Public Service Company—That during the calendar year 1926 said taxpayer sold miscellaneous capital assets and incurred a loss of $10,805.08 on said sale.

61. North Carolina Public Service Company—That in determining taxable net income of said taxpayer for the calendar year 1926 the respondent disallowed bad debts of $8,904.94 in order to place this deduction on the accrual basis. Upon information and belief the deduction for bad debts of this taxpayer for prior years was on an actual bad debts basis.

62. North Carolina Public Service Company—That during the calendar year 1926 said taxpayer incurred interest expense and/or ordinary and necessary expenses in the nature of amortization amounting to $190,306.42 which the respondent failed to allow.

63. Wiston-Salem Gas Company—That the respondent erroneously and illegally increased taxable net income by failing to allow prior year's net loss amounting to $1,373.78.

64. Winston-Salem Gas Company—That the respondent has erroneously and illegally added to income $974.59 repre-

senting proportion of loss due to unaffiliated period. On January 1, 1926, General Gas & Electric Corporation owned [fol. 24] 94.33 percent of Winston-Salem Gas Company's stock and acquired additional shares to bring its holding well over 99 per cent, on January 7, 1926.

65. Winston-Salem Gas Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes amounting to $11,074.94 of which only $7,289.14 was allowed by the respondent in determining taxable net income.

66. North Penn Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes amounting to $5,443.30 of which only $4,743.13 was allowed by the respondent in determining taxable net income.

E. Petitioner's income—Facts as to erroneous and illegal increases in taxable net income of your petitioner by respondent:

1. That the respondent erroneously and illegally increased taxable net income by including therein profit, on the sale of stock of a subsidiary company in the amount of $1,350.00.

2. That the respondent erroneously and illegally increased taxable net income by disallowing a deduction for legal expenses amounting to $7,500.00.

3. That the respondent erroneously and illegally increased taxable net income by including therein profit on the sale of bonds of a subsidiary company amounting to $21,900.00.

[fol. 25] F. That the respondent has erroneously and illegally determined, computed, allocated and assessed the income taxes between your petitioner, its affiliated taxpayers and/or the taxpayers engaged in said related trades or businesses, contrary to the agreement between said taxpayers, the determination of the Commissioner of Internal Revenue, the law and regulations made and provided.

Wherefore, your petitioner prays that your Honorable Board may hear and determine its petition; that the determination of the respondent contained in said deficiency letter be redetermined, set aside, disallowed and disapproved by your Honorable Board, granting unto your petitioner a reduction and disallowance of said respondent's deficiencies

and refunding or crediting the income tax overpayments and overassessments as follows:

Fiscal period beginning January 1, 1926 and ending December 31, 1926	Overassessment and Overpayment	$108,102.47

to your petitioner, its affiliated taxpayers and/or its taxpayers engaged in said related trades or businesses, in accordance with the agreement between said taxpayers, the determination of the Commissioner of Internal Revenue and the Law.

All of which is respectfully submitted.

Francis J. Sweeney, Counsel for the taxpayer.

Dated February 7th, 1931.

[fol. 26] *Duly sworn to by J. F. McKenna. Jurat omitted in printing.*

[fol. 27] EXHIBIT "A" TO PETITION

NP-2-26.

Treasury Department,

Washington

Office of Commissioner of Internal Revenue

Address Reply to Commissioner of Internal Revenue and Refer to

General Gas and Electric Corporation, Room 2406, 61 Broadway, New York, New York.

SIRS:

You are advised that the determination of your tax liability for the year 1926 discloses a deficiency of $90,169.05, as shown in the statement attached.

In accordance with section 274 of the Revenue Act of 1926, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, if You do not Desire to Petition, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this [fol. 28] agreement will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; Whereas if no Agreement is Filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully, David Burnet, Commissioner, by M. T. Sherwood, Acting Deputy Commissioner.

Enclosures: Statement. Form 882. Form 870. Schedules 1 to 51, inclusive.

[fol. 29] STATEMENT OF RETURNS EXAMINED AND RESULTING TAX LIABILITY

IT:AR:A-8-60D.
JES.

Returns Examined

Company:	Year	Form
General Gas and Electric Corporation, 61 Broadway	1926	Tentative 1120
New York, New York	1926	Final Consolidated 1120
The General Finance Corporation, 61 Broadway, New York, New York	1926	1122
Birdsboro Electric Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Reading Transit Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Oley Valley Railway Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Neversink Mountain Railway Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Reading Transit Bus Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Norristown Bus Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Oley Valley Quarry Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Womelsdorf and Meyerstown Railway Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122

[fol. 30]

General Gas and Electric Corporation. Company:	Statement Year	Form
Reading and Hamburg Railway Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Newton Gas Company, 30 West Blackwell Street, Dover, New Jersey	1926	1122
The Jersey Corporation, 30 West Blackwell Street, Dover, New Jersey	1926	1122
Susquehanna County Light, Heat & Power Company, 172 Washington Street, Binghamton, New York	1926	1122
Sayre Electric Company, 172 Washington Street, Binghamton, New York	1926	1122
The Waverly Electric Light & Power Company, 172 Washington Street, Binghamton, New York	1926	1122
Broad River Power Company, Arcade Building, Columbia, South Carolina	1926	1122
Columbia Railway, Gas and Electric Company, Arcade Building, Columbia, South Carolina	1926	1122
The Parr Shoals Power Company, Arcade Building, Columbia, South Carolina	1926	1122
Public Service Company of South Carolina, Arcade Building, Columbia, South Carolina	1926	1122
Columbia Gas Light Company, Arcade Building, Columbia, South Carolina	1926	1122

[fol. 31]

North Carolina Public Service, 118 North Elm Street, Greensboro, North Carolina	1926	1122
Salisbury and Spencer Railway Company, 118 North Elm Street, Greensboro, North Carolina	1926	1122
Greensboro Bus Company, 118 North Elm Street, Greensboro, North Carolina	1926	1122
Saluda Manufacturing Company, Arcade Building, Columbia, South Carolina	1926	1122
South Carolina Power Company, Arcade Building, Columbia, South Carolina	1926	1122
Central Carolina Power Company, Arcade Building, Columbia, South Carolina	1926	1122
North Penn Power Company, 172 Washington Street, Binghamton, New York	1926	1122
Northern Pennsylvania Power Company, 172 Washington Street, Binghamton, New York	1926	1122
Hamburg Gas & Electric Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Topton Electric Light & Power Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122

General Gas and Electric Corporation.

Company:	Year	Statement Form
Weisenberg Township Electric Light & Power Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
[fol. 32]		
Blue Ridge Power Company, Arcade Building, Columbia, South Carolina, 5/1 to 12/31	1926	1122
Berks-Lehigh Electric Company, 12 South 5th Street, Reading, Pennsylvania, 6/30 to 12/31	1926	1122
Ortanna Electric Light and Power Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
The French Creek Electric Company, 16 South 5th Street, Reading, Pennsylvania, 6/1 to 12/31	1926	1122
Melrose Power & Manufacturing Company, Arcade Building, Columbia, South Carolina, 10/1 to 12/31	1926	1122
Manufacturers Power Company, Arcade Building, Columbia, South Carolina, 5/1 to 12/31	1926	1122
Twelfth and Thirteenth Street Railway Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
New Jersey Power and Light Company, 30 West Blackwell Street, Dover, New Jersey, 12/1 to 12/31	1926	1122
Washington Gas Company, 30 West Blackwell Street, Dover, New Jersey, 12/1 to 12/31	1926	1122
Boonton Gas Light and Improvement Company, 30 West Blackwell Street, Dover, New Jersey, 1/1 to 3/31	1926	1122
New Jersey Power Corporation, 61 Broadway, New York, New York	1926	None
[fol. 33]		
Saylorsburg Light and Power Company, 61 Broadway, New York, New York	1926	None
Wahtawah Company, 61 Broadway, New York, New York	1926	None
Bernville Light Heat and Power Company, 12 South 5th Street, Reading, Pennsylvania, 6/30 to 12/31	1926	1122
Enoree Power Company, 61 Broadway, New York, New York	1926	None
Winston-Salem Gas Company, 61 Broadway, New York, New York, 6/22 to 7/1	1926	None

General Gas and Electric Corporation. Statement.

Company:	Year	Form
Binghamton Light, Heat and Power Company, 172 Washington Street, Binghamton, New York	1926	1122

Tax Liability

General Gas and Electric Corporation, 61 Broadway, New York, New York

Year	Correct Tax Liability	Tax Previously Assessed	Deficiency
1926	$163,615.76	$73,446.71	$90,169.05

Full details of the adjustments producing the above-stated result are contained in the attached schedules 1 to 51, inclusive.

Consents which will expire December 31, 1930, except as extended by the provisions of section 277(b) of the Revenue Act of 1926, are on file for the year 1926.

The entire tax liability has been allocated to the parent (or principal) company in accordance with the agreement as to allocation of tax, signed by each company included in the affiliated group, which is on file in this office.

[fol. 34] General Gas and Electric Corporation. Statement.

Inasmuch as the requirements of section 240 of the Revenue Act of 1926 have not been met the following named corporations have been ruled not affiliated with your company for the periods shown:

Company	Period or Year
New Jersey Power and Light Company	January 1 to November 30, 1926
Washington Gas Company	January 1 to November 30, 1926
Boonton Gas Light and Improvement Company	January 1 to March 31, 1926.
Binghamton Light, Heat & Power Company	1926
Melrose Power & Manufacturing Company	January 1 to September 30, 1926
Winston-Salem Gas Company	January 1 to June 21, 1926
Home Electric Company	1926
Pen Argyl Gas Company	1926

Your protest to the Revenue Agent's Report for the year 1926 has been carefully considered in the determination of the above stated deficiency.

In the determination of your correct tax liability due consideration has been given the grounds set forth in the claims for refund of corporation income tax, for the year 1926, filed by you and your affiliated companies. The claims, listed

below, will be made the subject of separate communications from this Bureau.

Name of company filing claim	Kind	Amount
General Gas and Electric Corporation	Refund	$95,565.42
Reading Transit Company	Refund	21,296.16
Oley Valley Railway Company	Refund	508.01
Saylorsburg Light and Power Company	Refund	201.44
Ortanna Electric Light and Power Company	Refund	407.63
North Carolina Public Service Company	Refund	13,832.19
Hamburg Gas and Electric Company	Refund	5,380.50
Weisenberg Township Electric Light and Power Company	Refund	1,006.12
	Refund	8.45
Bernville Light, Heat and Power Company	Refund	179.28
Birdsboro Electric Company	Refund	1,417.45

[fol. 35] General Gas and Electric Corporation. Statement.

Due to the fact that the statute of limitations will presently bar any assessment of additional tax against you for the year 1926, the Bureau will be unable to afford you an opportunity under the provisions of article 1211 of Regulations 69 to discuss your case before mailing formal notice of its determination as provided by section 272(a) of the Revenue Act of 1926. It is, therefore, necessary at this time to issue this formal notice of deficiency.

The assessments made under the provisions of section 279(a) of the Revenue Act of 1926 against the following affiliated companies in the amounts indicated will be made the subject of certificates of abatement upon final adjudicating the consolidated tax liability.

Company	Tax	Interest	Total
Berks-Lehigh Electric Company	$104.14	$18.62	$122.76
Ortanna Electric Light & Power Company	220.88	39.49	260.37
Saylorsburg Light and Power Company	3,179.91	568.50	3,748.41
Sayre Electric Company	4,104.77	733.85	4,838.62
Birdsboro Electric Company	858.17	153.42	1,011.59
Hamburg Gas and Electric Company	3,888.14	695.12	4,583.26
Bernville Light, Heat & Power Company	143.42	25.64	169.06
Susquehanna County Light, Heat & Power Company	1,336.29	238.90	1,575.19
Topton Electric Light & Power Company	808.30	144.51	952.81
Weisenberg Township Electric Light and Power Company	15.15	2.71	17.86
Melrose Power & Manufacturing Company	1,032.15	184.52	1,216.65

A carbon copy of this letter has been mailed to H. C. Hopson and Company, 61 Broadway, New York, New York, in accordance with the authorization contained in a power of attorney running to them which is on file in this office.

[fol. 36] General Gas and Electric Corporation

Year ended December 31, 1926

Schedule 1

Net Income

Net income as disclosed by return		$346,671.48
As corrected		355,625.48
Adjustment		$8,954.00
Unallowable deductions and additional income:		
(a) Profit on sale of stock of affiliated Company (New Jersey Power and Light Company)	$1,350.00	
(b) Contributions to capital	104.00	
(c) Organization expenses	7,500.00	
Total adjustment as above		$8,954.00

Schedule 1-A

Explanation of Items Changed

(a) This item represents profit realized from the sale of 2,700 shares of 7% preferred stock of the New Jersey Power and Light Company and the amount is added to taxable income in accordance with the provisions of section 233 of the [fol. 37] Revenue Act of 1926, as interpreted by article 541, Regulations 69.

(b) This item represents the difference between the par value and the amount received from the sale of the preferred stock of the New Jersey and Binghampton corporations which was contributed by the General Gas and Electric Corporation (Maine) and included as an allowable deduction in the consolidated income tax return for the taxable year. Inasmuch as the transaction is intercompany, the amount is eliminated in accordance with the provisions of section 240 of the Revenue Act of 1926, as interpreted by article 636, Regulations 69.

(c) This item represents expenses incurred in connection with the sale of the capital stock of the corporation and the amount is disallowed in accordance with the provisions of sections 215 and 235 of the Revenue Act of 1926, as in-

terpreted by articles 291-294 and 582 of Regulations 69, also see ARR 6048 published in Cumulative Bulletin III-1 and IT 1198 published in Cumulative Bulletin I-1.

[fol. 38] General Gas and Electric Corporation

Year Ended December 31, 1926

General Finance Corporation

Schedule 2

Net Income

Net income as disclosed by return	$(30,560.62)
As corrected	(25,480.62)
Adjustment	$5,080.00

Unallowable deductions and additional income:

(a) Profit on sale of stocks and bonds	$5,080.00

Schedule 2-A

Explanation of Items Changed

(a) This item represents profit realized during the taxable year in connection with the sale of stocks and bonds which was included as nontaxable income in your tax return and the amount is added to taxable income in accordance with the provisions of section 234 of the Revenue Act of 1926, as interpreted by article 541, Regulations 69.

Schedule 3

New Jersey Power Corporation

Net Income

Net loss as disclosed by return	$(15,300.00)
As corrected	No change.

[fol. 39] Schedule 4

Saylorsburg Light and Power Company

Net Income

Net income as disclosed by return	$2,027.43
As corrected	3,630.05
Adjustment	$1,602.62

General Gas and Electric Corporation

Year Ended December 31, 1926

Saylorsburg Light and Power Company

Schedule 4 (Continued)

Unallowable deductions and additional income:

(a) Taxes	$65.60	
(b) Depreciation	1,537.02	
Total adjustment as above		$1,602.62

Schedule 4-A

Explanation of Items Changed

(a) Inasmuch as the taxes paid by the corporation has been taken and allowed as deduction from gross income, in prior years, on the paid basis rather than on the accrual basis this adjustment is found necessary.

[fol. 40] (b) This item represents depreciation deducted from gross income, in your income tax return for the taxable year, in excess of the correct amount allowable as determined by the Bureau in accordance with the provisions of section 234(a)(7) of the Revenue Act of 1926, as interpreted by article 164, Regulations 69. The computation of the amount is as follows:

Plant account at January 1, 1926	$43,091.30
Plant account at December 31, 1926	80,801.71
Average for the year:	
(43,091.30 plus 80,801.71 divided by 2)	$61,946.50
Depreciation rate	2%
Depreciation deducted in return	$2,775.95
Depreciation sustained:	
(61,946.50 times 2%)	1,238.93
Amount disallowed as above	$1,537.02

Schedule 5

Wahtawah Company

Net Income

Net income as diclosed by return	None.
As corrected	No change.

[fol. 41] General Gas and Electric Corporation

Year Ended December 31, 1926

Reading Transit Company

Schedule 6

Net Income

Net income as disclosed by return		$213,956.56
As corrected		383,623.57
Adjustment		$169,667.01
Unallowable deductions and additional income:		
(a) Amortization of additions to leased property	$13,994.34	
(b) Increase in reserve for taxes	73,345.24	
(c) Depreciation	82,327.43	
Total adjustment as above		$169,667.01

Schedule 6-A

Explanation of Items Changed

(a) In the absence of the required information with respect to the terms of the leases under which the expenditures are made the above amount is disallowed in accordance with the provisions of section 214(a)(1) of the Revenue Act of 1926, as interpreted by articles 110 and 561, Regulations 69.

[fol. 42] (b) This amount represents the net increase in the reserve for taxes for the taxable year and is disallowed for the same reason as stated under Item (4), schedule 4-A above.

(c) For explanation of this adjustment see Item (b), schedule 4-A above. The amount is computed as follows:

Plant account January 1, 1926	$6,792,969.42	
Less engineering	14,012.41	
		$6,778,957.01
Plant account December 31, 1926	$6,848,198.14	
Less engineering	14,012.41	
		$6,834,185.73
Depreciation rate		1½%
Depreciation deducted in return		$184,426.00
Depreciation sustained (6,806,571.37 times 1½%)		102,098.57
Amount disallowed as above		$82,327.43

[fol. 43] General Gas and Electric Corporation

Oley Valley Railway Company

Year Ended December 31, 1926

Schedule 7

Net Income

Net income as disclosed by return	$4,723.21
As corrected	(168.51)
Net adjustment	$4,891.72
Unallowable deductions and additional income:	
(a) Net credit to Reserve for Taxes	$2,806.15
Nontaxable income and additional deductions:	
(b) Depreciation underaccrued	7,697.87
Net adjustment as above	$4,891.72

Schedule 7-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

(b) This item represents depreciation sustained during the taxable year, as determined by the Bureau, in excess of the amount taken as a deduction from gross income in your [fol. 44] income tax return and is allowed as a deduction

in accordance with the provisions of section 234(a)(7) of the Revenue Act of 1926 as interpreted by article 164, Regulations 69. The amount is computed as follows:

Average plant account for the year	$513,191.35
Depreciation rate	1½%
Depreciation sustained:	
(513,191.35 times 1½%)	$7,697.87
Amount deducted in return	None.
Amount allowed as above	$7,697.87

General Gas and Electric Corporation

Oley Valley Quarry Company

Year Ended December 31, 1926

Schedule 8

Net Income

Net loss as disclosed by return	$(409.86)
As corrected	(137.36)
Adjustment	$272.50
Unallowable deductions and additional income:	
(a) Net credits--Reserve for taxes	$272.50

Schedule 8-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

[fol. 45]

Schedule 9

Reading Transit Bus Company

Net Income

Net income as disclosed by return	$(2,615.67)
As corrected	(3,555.14)
Adjustment	$939.47

Nontaxable income and additional deductions:

(a) Net charges to reserve for taxes	$11.33	
(b) Depreciation underaccrued	928.14	
Total adjustment as above		$939.47

Schedule 9-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

(b) For explanation of this adjustment see Item (b), schedule 7-A above. The amount is computed as follows:

[fol. 46] General Gas and Electric Corporation

Year Ended December 31, 1926

Reading Transit Bus Company

Schedule 9-A (Continued)

Explanation of Items Changed (Continued)

Plant account at January 1, 1926	$19,619.71
Plant account at December 31, 1926	$19,814.83
Average for the year:	
(19,619.71 plus 19,814.83 divided by 2)	$19,717.27
Depreciation rate	20%
Depreciation sustained:	
(19,717.27 times 20%)	$3,943.45
Amount deducted in return	3,015.31
Additional amount allowed as above	$928.14

Schedule 10

Neversink Mountain Railway Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

[fol. 47] Schedule 11

Reading and Hamburg Railway Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 12

Twelfth and Thirteenth Street Railway Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 13

Womelsdorf and Meyerstown Railway Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

General Gas and Electric Corporation

Year Ended December 31, 1926

Norristown Bus Company

Schedule 14

Net Income

Net income as disclosed by return	None.
As corrected	No change.

[fol. 48] Schedule 15

Hamburg Gas and Electric Company

Net Income

Net income as disclosed by return	$53,131.77
As corrected	67,835.71
Adjustment	$14,703.94

Unallowable deductions and additional income:

(a) Net credit to reserve for taxes	$11,641.57	
(b) Amortized discount overaccrued	75.24	
(c) Depreciation overaccrued	2,987.13	
Total adjustment as above		$14,703.94

Schedule 15-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

(b) This item represents the overaccrual of amortized discount for the taxable year and is disallowed as a deduction from gross income in accordance with the provisions of section 233 of the Revenue Act of 1926 as interpreted by article 545(3)(a) of Regulations 69.

Amount deducted in return	$846.72
Allowable amount	771.48
Amount disallowed	$75.24

[fol. 49] General Gas and Electric Corporation

Year Ended December 31, 1926

Hamburg Gas and Electric Company

Schedule 15-A (Continued)

Explanation of Items Changed (Continued)

(c) For explanation of this adjustment see Item (b), schedule 4-A above. The amount is computed as follows:

Plant account at January 1, 1926	$352,197.92
Plant account at December 31, 1926	$381,602.83
Average for the year:	
(352,197.92 plus 381,602.83 divided by 2)	$366,900.38
Depreciation rate	2%
Depreciation deducted in return	$10,325.14
Depreciation sustained:	
(366,900.38 times 2%)	7,338.01
Amount disallowed as above	$2,987.13

Schedule 16

Topton Electric Light and Power Company

Net Income

Net income as disclosed by return	$9,983.08
As corrected	12,988.17
Adjustment	$3,005.09

Unallowable deductions and additional income:

(a) Net credit—Reserve for taxes	$3,005.09

[fol. 50]

Schedule 16-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

General Gas and Electric Corporation

Year Ended December 31, 1926

Weisenberg Township Electric Light and Power Company

Schedule 17

Net Income

Net income as disclosed by return	$148.97
As corrected	219.97
Adjustment	$71.00

Unallowable deductions and additional income:

(a) Net credit—Reserve for Taxes	$71.00

Schedule 17-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A, above.

[fol. 51]

Schedule 18

Ortanna Electric Light and Power Company

Net Income

Net income as disclosed by return	$3,892.18
As corrected	4,265.26
Adjustment	$373.08

Unallowable deductions and additional income:

(a) Net credit—Reserve for Taxes	$373.08

Schedule 18-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

General Gas and Electric Corporation

Year Ended December 31, 1926

Birdsboro Electric Company

Schedule 19

Net Income

Net income as disclosed by return	$14,078.27
As corrected	15,929.62
Adjustment	$1,851.35

Unallowable deductions and additional income:

(a) Net credit—Reserve for Taxes	$1,851.35

[fol. 52]

Schedule 19-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

Schedule 20

The French Creek Electric Company

Net Income

Net loss as disclosed by return	$(1,571.76)
As corrected	(42.44)
Net adjustment	$1,529.32

Unallowable deductions and additional income:

(a) Loss prior period	$1,498.10	
(b) Net credit—Reserve for Taxes	31.22	
Net adjustment as above		$1,529.32

Schedule 20-A

Explanation of Items Changed

(a) This item represents the loss sustained by this company from January 1 to June 1, 1926, during which period it was not affiliated with the General Gas and Electric Corporation. It is excluded in determining income of the affiliated companies.

(b) For explanation of this adjustment see Item (a), schedule 4-A above.

[fol. 53] General Gas and Electric Corporation

Year Ended December 31, 1926

Bernville Light, Heat and Power Company

Schedule 21

Net Income

Net income as disclosed by return	$1,725.67
As corrected	2,276.49
Adjustment	$550.82

Unallowable deductions and additional income:

(a) Net credit—Reserve for Taxes	$550.82

Schedule 21-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

Schedule 22

Berks-Lehigh Electric Company

Net Income

Net income as disclosed by return	$919.53
As corrected	1,447.74
Adjustment	$528.21

Unallowable deductions and additional income:

(a) Net credit—Reserve for Taxes	$528.21

[fol. 54]

Schedule 22-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

General Gas and Electric Corporation

Year Ended December 31, 1926

The Jersey Corporation

Schedule 23

Net Income

Net income as disclosed by return	$(13,445.42)
As corrected	(11,523.64)
Net adjustment	$1,921.78

Unallowable deductions and additional income:

(a) Net credit to reserve for taxes	$5,486.83

Nontaxable income and additional deductions:

(b) Depreciation underaccrued	$3,565.05
Net adjustment as above	$1,921.78

[fol. 55] Schedule 23-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

(b) For explanation of this adjustment see Item (b), schedule 7-A above. The amount is computed as follows:

Plant account January 1, 1926	$118,834.44
Plant account December 31, 1926	$118,835.70
Average for the year:	
(118,834.44 plus 118,835.70)	$118,835.07
Depreciation Rate	3%
Depreciation sustained:	
(118,835.07 times 3%)	$3,565.05
Amount deducted in return	-0-
Amount allowed as above	$3,565.05

General Gas and Electric Corporation

Year Ended November 30, 1926

Newton Gas Company

Schedule 24

Net Income

Net income as disclosed by return	$8,616.80
As corrected	9,355.45
Adjustment	$738.65
Unallowable deductions and additional income:	
(a) Net credit—Reserve for Taxes	$738.65

[fol. 56] Schedule 24-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

Schedule 25

New Jersey Power and Light Company

Period December 1 to December 31, 1926

Net Income

Net income as disclosed by return		$162,520.21
As corrected		36,656.19
Net adjustment		$125,864.02
Unallowable deductions and additional income:		
(a) Excessive bad debts	$2,925.00	
(b) Amortized accrued depreciation	2,094.29	
(c) Net increase in reserve for taxes	42,910.97	
(d) Unamortized accrued depreciation	44,027.05	
(e) Depreciation overaccrued	223,965.89	
Total		315,923.20

[fol. 57] General Gas and Electric Corporation

New Jersey Power and Light Company

Period December 1 to December 31, 1926

Schedule 25 (Continued)

Brought forward		$315,923.20
Nontaxable income and additional deductions:		
(f) Obsolescence	$38,569.08	
(g) Period adjustment	403,218.14	
Total		441,787.22
Net adjustment as above		$125,864.02

Schedule 25-A

Explanation of Items Changed

(a) This item represents a portion of the increase in the reserve for bad debts which was taken as a deduction from

gross income in your income tax return for the taxable year. Since an examination of your books of account and records indicates that the actual losses sustained in prior years are relatively small the above amount is held to be excessive and is disallowed in accordance with the provisions of sections [fol. 58] 214 (a) and 234 (a) of the Revenue Act of 1926 as interpreted by articles 151 and 155, Regulations 69. The amount is computed as follows:

Amount added to the reserve and deducted in return	$8425.00
Addition considered reasonable	5,500.00
Amount disallowed as above	$2,925.00

(b) This item represents depreciation accrued in prior years, which was not taken as a deduction in your income tax returns for the years in which sustained, and since your books are kept on the accrual basis the above amount is disallowed as a deduction from gross income for the taxable year in accordance with the provisions of sections 214 (a) and 234 (a) of the Revenue Act of 1926 as interpreted by article 112, Regulations 69.

(c) For explanation of this adjustment see Item (a), Schedule 4-A above.

(d) This item represents the balance of the unamortized depreciation for prior years which was charged off the books and taken as a deduction from gross income in your income tax return for the taxable year and the amount is disallowed in accordance with the provisions of sections 214 (a) and 234 (a) of the Revenue Act of 1926 as interpreted by article 112, Regulations 69.

[fol. 59] General Gas and Electric Corporation

New Jersey Power and Light Company

Period December 1 to December 31, 1926

Schedule 25-A (Continued)

Explanation of Items Changed (Continued)

(e) For explanation of this adjustment see Item (b), schedule 4-A above. The amount is computed as follows:

Plant account January 1, 1926	$6,482,735.67	
Less: Nondepreciable assets	677,235.45	
		$5,805,500.22
Plant account at December 31, 1926	$11,103,348.77	
Less: Nondepreciable assets	677,235.45	
		$10,426,113.32
Average for the year: (5,805,500.22 plus 10,426,113.32 divided by 2)		$8,115,806.77
Depreciation rate		2%
Depreciation deducted in return		$386,282.03
Allowable amount (8,115,806.77 times 2)		162,316.14
Amount disallowed as above		$223,965.89

[fol. 60] (f) This item represents obsolescence sustained on property retired during the taxable year and the amount is allowed in accordance with the provisions of section 214 (a) (8) of the Revenue Act of 1926 as interpreted by article 166, Regulations 69. The amount is computed as follows:

Obsolescence sustained (per books)	$127,883.61
Amount deducted in return	89,314.53
Additional amount allowed	$38,569.08

(g) This item represents the portion of the corrected net income for the period from January 1, 1926, to November 30, 1926, inclusive, during which your corporation was not affiliated with the General Gas and Electric Corporation. The amount is computed as follows:

Net income disclosed by return		$162,520.21
Add:		
Adjustments (a) to (e) inclusive	$315,923.20	
Deduct:		
Adjustment (f)	38,569.08	
		277,354.12
Corrected net income for 12 months		$439,874.33
Less:		
(439,874.33 divided by 12)		36,656.19
Amount allocated to the 11 months ended November 30, 1926		$403,218.14

[fol. 61] General Gas and Electric Corporation

Washington Gas Company

January 1 to November 30, 1926

Schedule 26

Net Income

Net income as disclosed by return	$2,846.83
As corrected	None.
Adjustment	$2,846.83

Nontaxable income and additional deductions:

(a) Period adjustment	$2,846.83

Schedule 26-A

Explanation of Items Changed

(a) Inasmuch as this corporation has been ruled not to be affiliated with the General Gas and Electric Corporation, for the period January 1 to November 30, 1926, inclusive, the above amount which was included in the consolidated net income as shown in the consolidated income tax return, has been excluded in accordance with the provisions of section 240 of the Revenue Act of 1926.

[fol. 62] Schedule 27

Boonton Gas Light and Improvement Company

Net Income

Net income as disclosed by return	$(374.23)
As corrected	None.
Net adjustment	$374.23

Unallowable deductions and additional income:

(a) Period adjustment	$374.23

Schedule 27-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 26-a above.

General Gas and Electric Corporation

Year Ended December 31, 1926

Binghamton Light, Heat and Power Company

Schedule 28

Net Income

Net income as disclosed by return	$311,103.73
As corrected	None.
Adjustment	$311,103.73

Nontaxable income and additional deductions:

(a) Period adjustment	$311,103.73

Schedule 28-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 26-a above.

[fol. 63]

Schedule 29

Northern Pennsylvania Power Company

Net Income

Net income as disclosed by return		$(200,785.61)
As corrected		78,170.41
Net adjustment		$278,956.02

Unallowable deductions and additional income:

(a) Net increase in reserve for taxes	$31,048.83	
(b) Amortized discount and expense	115,422.19	
(c) Loss on assets sold overstated	2,462.52	
(d) Obsolescence	73,609.39	
(e) Depreciation	59,598.54	
Total		$282,141.47

Nontaxable income and additional deductions:	
(f) Losses sustained — Bad debts	$3,185.45
Net adjustment as above	$278.956.02

General Gas and Electric Corporation

Year Ended December 31, 1926

Northern Pennsylvania Power Company

Schedule 29-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

[fol. 64] (b) This item represents amortized discount and expense on bond issues of predecessor companies which was taken as a deduction from gross income in your income tax return for the taxable year and the amount is disallowed in accordance with the provisions of the decision of the United States Board of Tax Appeals in the case of the Western Maryland Railway Company vs. the Commissioner of Internal Revenue as published in United States Board of Tax Appeals Reports Volume 12, page 889.

(c) This item represents an overaccrual of losses sustained in connection with the sale of capital assets during the taxable year and taken as a deduction from gross income in your income tax return and is disallowed in accordance with the provisions of section 204 of the Revenue Act of 1926 as interpreted by article 1591, Regulations 69.

Amount deducted in return		$10,616.44
Cost	$29,129.14	
Depreciation sustained	3,977.35	
Adjusted value	$25,151.79	
Selling price	16,997.87	
Loss actually sustained		8,153.92
Amount disallowed as above		$2,462.52

(d) In the absence of sufficient information to support this deduction the amount is disallowed in accordance with the provisions of section 214(a)(8) of the Revenue Act of 1926 as interpreted by article 166, Regulations 69.

[fol. 65] General Gas and Electric Corporation

Year Ended December 31, 1926

Northern Pennsylvania Power Company

Schedule 29-A—(Continued)

Explanation of Items Changed—(Continued)

(e) For explanation of this adjustment see Item (b), schedule 4-A above. The amount is computed as follows:

Plant account at January 1, 1926	$456,182.36
Plant account at December 31, 1926	3,562,054.80
Average for the year:	
(456,182.36 plus 3,562,054.80 divided by 2)	2,009,118.58
Depreciation rate	2%
Depreciation deducted in return	99,780.91
Amount allowable:	
(2,009,118.58 times 2%)	40,182.37
Amount disallowed as above	$59,598.54

(f) This item represents the difference between the amount credited to the reserve for bad debts during the taxable year and the amount charged thereto. Inasmuch as this corporation has been allowed to deduct the actual amount of the losses sustained in prior years on account of bad debts this adjustment is necessary in accordance with the provisions of section 214(a)(7) of the Revenue Act of [fol. 66] 1926 as interpreted by articles 151 and 155, Regulations 69. The amount is computed as follows:

Amount charged to the reserve	$5,860.45
Amount credited to the reserve and deducted in the return	2,675.00
Additional loss allowed as above	$3,185.45

Schedule 30

Waverly Electric Light and Power Company

Net Income

Net income as disclosed by return	$150.00
As corrected	No change.

General Gas and Electric Corporation

Period Ended July 1, 1926

Sayre Electric Company

Schedule 31

Net Income

Net income as disclosed by return		$23,132.40
As corrected		52,029.64
Adjustment		$28,897.24
Unallowable deductions and additional income:		
(a) Loss on sale of property overstated	$18,317.25	
(b) Increase in reserve for taxes	5,976.79	
(c) Depreciation over accrued	4,603.20	
Total adjustment as above		$28,897.24

[fol. 67] Schedule 31-A

Explanation of Items Changed

(a) This item represents an overaccrual of losses sustained in connection with the sale of capital assets during the taxable year and taken as a deduction from gross income in your income tax return and is disallowed in accordance with the provisions of section 204 of the Revenue Act of 1926 as interpreted by article 1591, Regulations 69. The amount is computed as follows:

Amount deducted in return	$19,022.72

Loss sustained:			
Cost		$26,606.30	
Depreciation sustained	$25,240.83		
Selling price	660.00		
		25,900.83	
			$705.47
Amount disallowed as above			$18,317.25

(b) For explanation of this adjustment see Item (a), schedule 4-a above.

(c) For explanation of this adjustment see Item (b), schedule 4-a above. The amount is computed as follows:

[fol. 68] General Gas and Electric Corporation

Period Ended July 1, 1926

Sayre Electric Company

Schedule 31-A (Continued)

Explanation of Items Changed (Continued)

Plant account January 1, 1926	$918,839.58
Plant account December 31, 1926	$909,563.58
Average assets for the year:	
(918,839.58 plus 909,563.58 divided by 2)	$914,201.63
Depreciation rate per annum	2%
Depreciation sustained for 12 months:	
(914,701.63 times 2%)	$18,284.03
Depreciation sustained for 6 months:	
(18,284.03 times 6 divided by 12)	$9,142.01
Amount deducted in return	13,745.21
Amount disallowed as above	$4,603.20

Schedule 32

Susquehanna County Light and Power Company

Net Income

Net income as disclosed by return	$18,233.12
As corrected	21,546.28
Net adjustment	$3,313.16

[fol. 69] Unallowable deductions and additional income:

(a) Loss on property sold	$963.04
(b) Net increase in reserve for taxes	2,350.12
Total adjustment as above	$3,313.16

General Gas and Electric Corporation

Period Ended July 1, 1926

Susquehanna County Light and Power Company

Schedule 32-A

Explanation of Items Changed

(a) This item represents an overaccrual of losses sustained in connection with the sale of capital assets during the taxable year and taken as a deduction from gross income in your income tax return and is disallowed in accordance with the provisions of section 204 of the Revenue Act of 1926 as interpreted by article 1591, Regulations 69. The amount is computed as follows:

Amount deducted in return			$1,365.04
Loss sustained:			
Cost		$1,652.20	
Depreciation sustained	$1,035.20		
Selling price	215.00		
		1,250.20	
			402.00
Amount disallowed as above			$963.04

(b) For explanation of this adjustment see Item (a), schedule 4-A above.

[fol. 70] Schedule 33

North Penn Power Company

Period Ended April 1, 1926

Net Income

Net income as disclosed by return	$1,632.83
As corrected	(3,043.90)
Net adjustment	$4,676.73

Unallowable deductions and additional income:	
(a) Loss on property sold	$307.61
Nontaxable income and additional deductions:	
(b) Net decrease in reserve for taxes	4,984.34
Net adjustment as above	$4,676.73

General Gas and Electric Corporation

Period Ended July 1, 1926

North Penn Power Company

Schedule 33-A

Explanation of Items Changed

(a) This item represents an overaccrual of losses sustained during the taxable year in connection with the sale of capital assets during the taxable year and taken as a deduction from gross income in your income tax return and is disallowed in accordance with the provisions of section 204 of the Revenue Act of 1926 as interpreted by article 1591, Regulations 69. The amount is computed as follows:

[fol. 71] Amount deducted in return			$434.13
Loss sustained:			
Cost		$875.00	
Depreciation sustained	$340.00		
Selling price	408.48		
		748.48	
			126.52
			$307.61

(b) For explanation of this adjustment see Item

Schedule 34

(a), schedule 4-A above.

Broad River Power Company

Year Ended December 31, 1926

Net Income

Net income as disclosed by return	$158,406.25
As corrected	224,401.25
Adjustment	$65,995.00

Unallowable deductions and additional income:

(a) Bad debts	$4,164.87	
(b) Amortized discount and expense	1,107.79	
(c) Net increase in reserve for taxes	16,193.76	
(d) Obsolescence	44,528.58	
Total adjustment as above		$65,955.00

[fol. 72] General Gas and Electric Corporation

Year Ended December 31, 1926

Broad River Power Company

Schedule 34-A

Explanation of Items Changed

(a) This item represents the amount charged to the reserve for bad debts in excess of the amount credited thereto during the taxable year and taken as a deduction from gross income in your income tax return. Inasmuch as you have been allowed as a deduction, in prior years, the amount credited to the reserve rather than the charges thereto the above amount is disallowed in accordance with the provisions of section 214(a)(7) of the Revenue Act of 1926 as interpreted by articles 151 and 155, Regulations 69.

(b) This item represents unamortized discount and expenses acquired by the corporation together with the assets of various companies, which are affiliated during the taxable year, and is disallowed as a deduction from gross income in accordance with the decision of the United States Board of Tax Appeals in the case of the Western Maryland Railroad Company as published in United States Board of Tax Appeals Reports Volume 12, page 889.

(c) For explanation of this adjustment see Item (a), schedule 4-A above.

[fol. 73] (d) In the absence of sufficient information to support your contention with respect to this deduction the amount is disallowed in accordance with the provisions of section 214(a)(8) of the Revenue Act of 1926 as interpreted by article 166, Regulations 69.

Schedule 35

Columbia Railway Gas and Electric Company

Net Income

Net income as disclosed by return	(238,485.03)
As corrected	(103,929.03)
Adjustment	$134,556.00

General Gas and Electric Corporation

Year Ended December 31, 1926

Columbia Railway Gas and Electric Company

Schedule 35 (Continued)

Unallowable deductions and additional income:

(a) Loss on property sold and abandoned	$20,595.66	
(b) Obsolescence	113,960.34	
Total adjustment		$134,556.00

[fol. 74]

Schedule 35-A

Explanation of Items Changed

(a) and (b) Inasmuch as the information submitted by you in schedule Jc-page 5 of your income tax return for the year 1926, does not show the computation of the above amounts in sufficient detail, as required under section 214(2) (8) of the Revenue Act of 1926 as interpreted by articles 161 and 166, Regulations 69, they are disallowed.

Schedule 36

The Parr Shoals Power Company

Period Ended November 10, 1926

Net Income

Net income as disclosed by return	$None.
As corrected	No change

Schedule 37

Public Service Company of South Carolina

Year Ended December 31, 1926

Net Income

Net income as disclosed by return	$None.
As corrected	No change.

Schedule 38

Columbia Gas Light Company

Net Income

Net income as disclosed by return	$None.
As corrected	No change.

[fol. 75] General Gas and Electric Corporation

Blue Ridge Power Company

Period May 1 to December 31, 1926

Schedule 39

Net Income

Net income as disclosed by return	$(119,507.06)
As corrected	(7,967.80)
Adjustment	$111,539.26

Unallowable deductions and additional income:

(a) Depreciation	$45,049.14	
(b) Amortized bond discount and expense	12,039.58	
(c) Miscellaneous unallocated items	5,483.53	
(d) Operating expenses applicable to prior years	21,827.67	
(e) Net credit to Reserve for Taxes	26,656.44	
(f) Period adjustment	482.90	
Total		$111,539.26

[fol. 76] Schedule 39-A

Explanation of Items Changed

(a) Inasmuch as the information submitted with your return is not sufficient to enable the Bureau to determine the correctness of this deduction, the amount is disallowed in accordance with the provisions of section 214(a)(8) of the Revenue Act of 1926, as interpreted by article 161, Regulations 69. The amount was not written off on the books.

(b) The information submitted with your return is not sufficient to enable the Bureau to determine the correctness of this deduction and since the amount has not been written off on the books, the deduction is disallowed in accordance with the provisions of section 233(a) of the Revenue Act of 1926, as interpreted by article 545(3)(a), Regulations 69.

(c) This unexplained item is disallowed for the reason that character of the deduction is not shown and the amount has not been charged off on the books.

(d) This item represents expenses of prior years and the amount is disallowed in accordance with the provisions of section 214(a) of the Revenue Act of 1926, as interpreted by article 112, Regulations 69.

[fol. 77] General Gas and Electric Corporation

Blue Ridge Power Company

Period May 1 to December 31, 1926

Schedule 39-A (Continued)

Explanation of Items Changed (Continued)

(e) For explanation of this adjustment see Item (a), schedule 4-A, above.

(f) Net loss as corrected	$8,450.70
Amount applicable to this period (231/245)	7,967.80
Amount applicable to period not affiliated	$482.90

Schedule 40

Manufacturers Power Company

Net Income

Net income as disclosed by return		$(49,206.54)
As corrected		2,021.55
Net adjustment		$51,228.09
Unallowable deductions and additional income:		
(a) Depreciation	$49,206.54	
(b) Bond discount and expense	7,021.55	
Total		$56,228.09
Nontaxable income and additional deductions:		
(c) Net decrease in reserve for taxes		5,000.00
Net adjustment as above		$51,228.09

[fol. 78]

Schedule 40-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 39-A above.

General Gas and Electric Corporation

Manufacturers Power Company

Period May 1 to December 31, 1926

Schedule 40-A (Continued)

Explanation of Items Changed (Continued)

(b) This item represents the overaccrual of amortized bond discount taken as a deduction from gross income in your income tax return for the taxable year and is disallowed in accordance with the provisions of section 233(a) of the Revenue Act of 1926 as interpreted by article 545(3)(a), Regulations 69. The amount is computed as follows:

Amount deducted in return	$17,931.95
Allowable amount	10,910.40
Amount disallowed as above	$7,021.55

(c) For explanation of this adjustment see Item (a), schedule 4-A above.

[fol. 79] Schedule 41

Melrose Power and Manufacturing Company

Period October 1 to December 31, 1926

Net Income

Net income as disclosed by return	$6,429.00
As corrected	12,698.27
Adjustment	$6,269.27

Unallowable deductions and additional income:

(a) Depreciation not written off	$1,726.71	
(b) Bad debts	100.00	
(c) Net credit to reserve for taxes	4,442.56	
Total adjustment as above		$6,269.27

General Gas and Electric Corporation

Melrose Power and Manufacturing Company

Period October 1 to December 31, 1926

Schedule 41-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 39-A above.

(b) Since the corporation has not complied with the provisions of section 214(a)(7) as interpreted by article 155, Regulations 69, with respect to bad debts, the above amount is disallowed. The amount represents the amount credited to the reserve for bad debts rather than the amount charged thereto.

(c) For explanation of this adjustment see Item (a), schedule 4-A above.

[fol. 80] Schedule 42

North Carolina Public Service Company

Year Ended December 31, 1926

Net Income

Net income as disclosed by return		$123,376.95
As corrected		101,968.55
Net adjustment		$21,408.40
Unallowable deductions and additional income:		
(a) Addition to reserve for injuries and damages	$2,400.00	
(b) Net credit to reserve for taxes	17,852.65	
(c) Loss on sale of property	10,805.08	
(d) Bad debts	8,904.94	
(e) Miscellaneous deductions	1,064.04	
(f) Amortized debt discount and expense	190,306.42	
Total		$231,333.13
Nontaxable income and additional deductions:		
(g) Depreciation		252,741.53
Net adjustment as above		$21,408.40

[fol. 81] General Gas and Electric Corporation

Year Ended December 31, 1926

North Carolina Public Service Company

Schedule 42-A

Explanation of Items Changed

(a) An analysis of the reserve for injuries and damages discloses that the net credit to the account was $2,400.00, in excess of the amount shown in schedule "L" of the income tax return; therefore the above amount is disallowed.

(b) For explanation of this adjustment see Item (a), schedule 4-A above.

(c) Inasmuch as the information submitted does not conform to the requirements of section 204 of the Revenue Act of 1926 as interpreted by article 1591, Regulations 69, the above amount is disallowed.

(d) This amount was charged to the reserve for contingencies and represents an additional deduction for bad debts, which was taken in your income tax return for the taxable year, and since this corporation has been allowed to deduct bad debts on the accrual basis, in prior years as provided in section 214(a)(7) as interpreted by article 155 of Regulations 69, this deduction is disallowed.

[fol. 82] (e) In the absence of sufficient information relative to this deduction the amount is disallowed in accordance with the provisions of section 234(a) of the Revenue Act of 1926 as interpreted by article 561, Regulations 69.

(f) This item represents bond discount and expense deducted from gross income in your income tax return for the taxable year which was not written off the books and in the absence of sufficient information to enable the Bureau to compute the correct amount allowable the entire deduction is disallowed. See section 233(a) of the Revenue Act of 1926 as interpreted by article 545(3)(a) of Regulations 69.

(g) For explanation of this adjustment see Item (b), schedule 7-A above. The amount is computed as follows:

Plant account January 1, 1926	$6,302,831.56
Plant account December 31, 1926	$8,139,541.68
Average for the year:	
(6,302,831.56 plus 8,139,541.68 divided by 2)	$7,221,186.62
Depreciation sustained:	
(7,221,186.62 times 3½%)	$252,741.53
Amount deducted in return	None.
Amount allowed as above	$252,741.53

[fol. 83] General Gas and Electric Corporation

Year Ended December 31, 1926

Salisbury and Spencer Railway Company

Schedule 43

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 44

Greensboro Bus Company

Net Income

Net loss as disclosed by return	$(3,671.65)
As corrected	No change.

Schedule 45

Winston-Salem Gas Company

Period June 22 to July 1, 1926

Net Income

Net income as disclosed by return	($2,399.37)
As corrected	(51.00)
Adjustment	$2,348.37

Unallowable deductions and additional income:

(a) Net loss prior period	$1,373.78	
(b) Period adjustment	974.59	
Total adjustment as above		$2,348.37

[fol. 84] Schedule 45-A

Explanation of Items Changed

(a) The net loss sustained prior to affiliation with the General Gas and Electric corporation is excluded from the consolidated net income.

(b) Net loss as corrected	$1,025.59
Amount applicable to affiliated period	51.00
Amount excluded from consolidated income as above	$974.59

General Gas and Electric Corporation

Year Ended December 31, 1926

Saluda Manufacturing Company

Schedule 46

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 47

South Carolina Power Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

[fol. 85]

Schedule 48

Central Carolina Power Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 49

Enoree Power Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

General Gas and Electric Corporation. Year ended December 31, 1926

Schedule 50

Consolidated Net Income

Net income as corrected:

General Gas and Electric Corporation	Schedule	1	$355,625 48
Saylorsburg Light and Power Company	"	4	3,630 05
Wahtawah Company	"	5	-0-
Reading Transit Company	"	6	383,623 57
Neversink Mountain Railway Company	"	10	-0-
Reading and Hamburg Railway Company	"	11	-0-
Twelfth and Thirteenth Street Railway Company	"	12	-0-
Womelsdorf and Meyerstown Railway Company	"	13	-0-
Norristown Bus Company	"	14	-0-
Hamburg Gas and Electric Company	"	15	67,835 71
Topton Electric Light and Power Company	"	16	12,988 17

General Gas and Electric Corporation. Year ended December 31, 1926.

Schedule 50

(continued)

Consolidated Net Income (continued)

[fol.86] Weisenberg Township Electric Light and Power Company	Schedule	17	$219.97
Ortanna Electric Light and Power Company	"	18	4,265.26
Birdsboro Electric Company	"	19	15,929.62
Bernville Light Heat and Power Company	"	21	2,276.49
Berks-Lehigh Electric Company	"	22	1,447.74
Newton Gas Company	"	24	9,355.45
New Jersey Power and Light Company	"	25	36,656.19
Washington Gas Company	"	26	-0-
Boonton Gas Light and Improvement Company	"	27	-0-
Binghamton Light, Heat and Power Company	"	28	-0-
Northern Pennsylvania Power Company	"	29	78,170.41
Waverly Electric Light and Power Company	"	30	150.00
Sayre Electric Company	"	31	52,029.64
Susquehanna County Light and Power Company	"	32	21,546.28
Broad River Power Company	"	34	224,401.25
The Parr Shoals Power Company	"	36	-0-
Public Service Company of South Carolina	"	37	-0-
Columbia Gas Light Company	"	38	-0-
Manufacturers Power Company	"	40	2,021.55
Melrose Power and Manufacturing Company	"	41	12,698.27
North Carolina Public Service Company	"	42	101,968.55
Salisbury and Spencer Railway Company	"	43	-0-
Saluda Manufacturing Company	"	46	-0-
South Carolina Power Company	"	47	-0-
Central Carolina Power Company	"	48	-0-
Enoree Power Company	"	49	-0-
Total			$1,386,839.65

[fol. 87]

Net losses as corrected:

General Finance Corporation	Schedule	2	$25,480.62
New Jersey Power Corporation	"	3	15,300.00
Oley Valley Railway Company	"	7	168.51
Oley Valley Quarry Company	"	8	137.36
Reading Transit Bus Company	"	9	3,555.14
The French Creek Electric Company	"	20	42.44
The Jersey Corporation	"	23	11,523.64
North Penn Power Company	"	33	3,043.90
Columbia Railway Gas & Electric Company	"	35	103,929.03
Blue Ridge Power Company	"	39	7,967.80
Greensboro Bus Company	"	44	3,671.65
Winston-Salem Gas Company	"	45	51.00
Total			174,871.09
Consolidated net income as corrected			$1,211,968.56

[fol. 88] Schedule 51

Computation of Tax—1926 Rates

		Income	Tax
Corrected consolidated net income, schedule 50, taxable at 13½		$1,211,968.56	$163,615.76
Tax previously assessed:			
Original number 406627		106,565.42	
Additional			
Newton Gas Company (March 1930, P) LO Spl _2		478.70	
Total assessments		$107,044.12	
Less:			
Amounts allocated to companies for the period not affiliated:			
New Jersey Power and Light Company	$10,813.72		
Washington Gas Company	202.47		
Binghamton Light, Heat & Power Co	22,581.22	33,597.41	73,446.71
Additional tax to be assessed			$90,169.05

[fol. 89] Exhibit "B" to Petition

General Gas & Electric Corporation

Affiliated Taxpayers The same as determined by the respondent except:	Period of Affiliation The same as determined by the respondent except:
(1) New Jersey Power and Light Company	January 1, 1926 to November 30, 1926
(2) Washington Gas Company	January 1, 1926 to November 30, 1926
(3) Boonton Gaslight & Improvement Company	January 1, 1926 to March 31, 1926
(4) Binghamton Light, Heat & Power Company	January 1, 1926 to December 31, 1926
(5) Winston-Salem Gas Company	January 1, 1926 to December 31, 1926

Exhibit "C" to Petition

General Gas & Electric Corporation

Taxpayers engaged in related trades or businesses The same as determined by the respondent except:	Period of ownership or control The same as determined by the respondent except:
(1) New Jersey Power and Light Company	January 1, 1926 to November 30, 1926
(2) Washington Gas Company	January 1, 1926 to November 30, 1926
(3) Boonton Gaslight & Improvement Company	January 1, 1926 to March 31, 1926
(4) Binghamton Light, Heat & Power Company	January 1, 1926 to December 31, 1926
(5) Winston-Salem Gas Company	January 1, 1926 to December 31, 1926

[fol. 90] BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

ANSWER—Filed March 30, 1931

The Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above named taxpayer, admits and denies as follows:

I. Admits the allegations contained in Paragraph I.

II. Admits the allegations contained in Paragraph II.

III. Admits the allegations contained in Paragraph III.

IV. Admits the allegations contained in Paragraph IV.

V(A) to (F), inclusive. Denies that the Commissioner has committed any errors as alleged in subparagraphs (A) [fol. 91] to (F), inclusive, of Paragraph V.

VI(A). Admits the allegations contained in Paragraph VI(A).

VI(B), (B-1) and (B-2). Denies the allegations contained in subparagraphs (B), (B-1) and (B-2) of Paragraph VI.

VI(C), (C-1), (C-2) and (C-3). Denies the allegations contained in subparagraphs (C), (C-1), (C-2) and (C-3) of Paragraph VI.

VI(D), (1) to (66), inclusive. Denies the allegations contained in subparagraphs (1) to (66), inclusive, of Paragraph VI(D).

VI(E), (1) to (3), inclusive. Denies the allegations contained in subparagraphs (1) to (3), inclusive, of Paragraph VI(E).

VI(F). Denies the allegations contained in Paragraph VI(F).

VII. Avers that prior to the running of the statute of limitations applicable to the assessment and/or collection of the taxes in controversy, and thereafter, both the Commissioner of Internal Revenue and the taxpayer duly en-

tered into written agreements consenting to a later determination, assessment, and collection of the taxes in controversy in accordance with the provisions of the Revenue Acts of 1926 and 1928, and that said agreements extended the time for the determination, assessment and collection [fol. 92] of the said taxes beyond the date of the running of the said statute of limitations and up to and including six months and sixty days after the final decision of the United States Board of Tax Appeals in the proceedings herein.

VIII. Denies generally and specifically each and every allegation contained in taxpayer's petition and not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the taxpayer's appeal be denied.

(Signed) C. M. Charest, General Counsel, Bureau of Internal Revenue. Of Counsel: Eugene Meacham, C. E. Lowery, Special Attorneys, Bureau of Internal Revenue.

[fol. 93] BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

REPLY TO ANSWER—Filed April 25, 1931

The General Gas and Electric Corporation, by its counsel, Francis J. Sweeney, for reply to the answer of the respondent herein, denies and avers as follows:

VII. Denies the allegations contained in paragraph VII of the respondent's answer.

Wherefore, your petitioner prays that its petition be granted.

Francis J. Sweeney, Counsel for the Petitioner. Room 2401, 61 Broadway, New York, N. Y.

Dated, April 24, 1931.

[fol. 94] To B. D. Gamble, Clerk, United States Board of Tax Appeals, Washington, D. C. C. M. Charest, General Counsel, Bureau of Internal Revenue, Washington, D. C. Eugene Meacham, C. E. Lowery, Attorneys, Washington, D. C.

[fol. 95] BEFORE UNITED STATES BOARD OF TAX APPEALS, WASHINGTON, D. C.

Docket No. 52,639

GENERAL GAS & ELECTRIC CORPORATION, Petitioner,

Docket No. 52,680

BINGHAMTON LIGHT, HEAT & POWER COMPANY, Petitioner,

Docket No. 49,079

NEW JERSEY POWER & LIGHT COMPANY, as Successor by merger to Newton Gas Company, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

STIPULATION OF FACTS—Filed January 10, 1935

It is hereby stipulated and agreed, by and between the parties hereto, by their respective attorneys, that the above-entitled proceedings having been consolidated for hearing by order of the Board of Tax Appeals, the following facts shall be taken as true, provided this stipulation shall be without prejudice to the right of either party to present further evidence not inconsistent with the facts herein stipulated.

[fol. 96] 1. The petitioner, General Gas & Electric Corpor-tion, a corporation duly organized and existing under the laws of the State of Delaware, is and was at all times material to this proceeding, engaged in the business of holding securities and thus controlling public utility subsidiaries serving in the States of New York, New Jersey, Pennsylvania, Maryland, North Carolina, South Carolina and Florida.

2. The petitioners, with their affiliated taxpayers, filed a consolidated income tax return for the calendar year 1926. A list of the affiliated taxpayers appears on pages 1 to 5, inclusive, of the deficiency notice, being Exhibit A attached to the petition in Docket No. 52,639. By an agreement signed by the parent corporation and each of its subsidiaries, the entire income tax liability of each of the petition-

by Section 5 of the Act of April 17, 1876, P. L. 30, of the laws of the Commonwealth of Pennsylvania with the approval and sanction of the Public Service Commission of Pennsylvania pursuant to Section 3(c), Article III and Sections 18 and 19, Article V of the Public Service Company Law of the Commonwealth of Pennsylvania with the issuance of a report, order and certificate of public convenience. (Copies of the report, order and certificate of public convenience and the application of the companies to the Public Service Commission are attached hereto and made a part hereof, marked Exhibit B).

As a result of said transfer, Northern Pennsylvania Power Company took over all the assets and assumed all the liabilities of the Susquehanna County Light and Power Company, including the liability of said First Mortgage Bonds, which constituted a prior lien upon the assets so transferred, the further consideration paid for said assets [fol. 100] was stock of the transferee issued in exchange for the surrender of the stock of the transferor. At the time of the aforesaid transfer of the assets of the Susquehanna County Light and Power Company, the principal amount of the bonds then outstanding was $600,000 and the amount of the unamortized debt discount and expense incurred upon the issue and sale of said bonds was $20,509.51, which amount was transferred as a deferred charge asset to the books of the Northern Pennsylvania Power Company. On July 23, 1926, Northern Pennsylvania Power Company redeemed $600,000 principal amount of said bonds (being the entire amount then outstanding) at 105% of the principal amount thereof, thereby incurring and paying premiums in the amount of $30,000, in accordance with the terms of the Trust Indenture.

The Northern Pennsylvania Power Company in 1926, deducted $587.40 amortization of debt discount and expense and there remained at the date of redemption $19,922.11 unamortized debt discount and expense incurred through the issuance and sale of said bonds. The petitioners claim the right to deduct from the gross income of Northern Pennsylvania Power Company, for 1926, said premium amounting to $30,000 and said unamortized debt discount and expense amounting to $19,922.11. Said amounts $19,922.11, unamortized debt discount and expense and $30,000.00 premium on retirement of said bonds in 1926, were not taken as an expense on the books of the Northern Pennsylvania

Power Company, but were transferred to debt discount and expense applicable to the refunding issue. The funds for the retirement of said First Mortgage 6% bonds were ob- [fol. 101] tained from the proceeds of the sale in 1926, of $1,950,000.00 principal amount Northern Pennsylvania Power Company, First and Refunding Mortgage Bonds Series A due June 1, 1956.

5. Piedmont Power and Light Company was a corporation organized under the laws of the State of North Carolina in 1911. On or about May 1, 1919, the Piedmont Power and Light Company executed an Indenture and Trust Agreement providing for the issuance of its First mortgage 15 Year Sinking Fund Gold 6% Series Bonds. On or about May 1, 1919, or thereafter, it issued and sold its First Mortgage 6% Series Gold Bonds. On March 15, 1921, by supplemental indenture it provided for the issuance and sale of a 7% series and by the terms of which it was provided that the 7% series could be converted at the holders' option into 6% series upon payment of an 8% cash premium at conversion. In 1924, the assets of Piedmont Power and Light Company were sold and transferred to North Carolina Public Service Company, Inc., and the liabilities assumed. The North Carolina Public Service Company, Inc., thereupon assumed the aforesaid mortgage liability under the original and supplemental Indenture of the Piedmont Power and Light Company. The North Carolina Public Service Company incurred during 1925 and 1926, debt discount amounting to $6,884.50, pursuant to the provisions of the supplemental indenture for the conversion of the 7% series into 6% series by paying an 8% cash premium on principal amount of the bonds at conversion subsequent to its assumption of the [fol. 102] mortgage liability. There was amortized $866.84, leaving unamortized debt discount of $6,017.66 claimed by the petitioner in 1926. The bonds were called and redeemed on November 1, 1926, and of the outstanding bonds there were $183,700 of the 7% series retired at 105 and $184,100 of the 6% series retired at 103 making the premiums on the former $9,185.00 and on the latter $5,523.00, which thereupon accrued and were paid. In addition thereto, said taxpayer incurred and paid legal and advertising expense in connection with the redemption of $2,112.50. The petitioners claim the right to deduct from the gross income of

North Carolina Public Service Company, Inc., for the year 1926, said premiums amounting to $14,708.00; the unamortized debt discount which accrued subsequent to its assumption of said debt obligation in the amount of $6,017.66; also the legal and advertising expense in connection with the redemption and retirement of said debt obligation in the amount of $2,112.50.

6. North Carolina Public Service Company, Inc., was incorporated under the laws of North Carolina on or about February 26, 1924. Thereafter it issued and sold its First Lien and Refunding Gold 6½s Series A Bonds due February 1, 1944. The bonds were callable on thirty days notice on any interest date to and including February 1, 1929, at 107½. On August 1, 1926, it redeemed $880,000.00 (being all the outstanding bonds) of its First Lien and Refunding Mortgage 6½% Gold Bonds Series A due February 1, 1944. Upon the making of the aforesaid retirement, said taxpayer [fol. 103] incurred and paid a premium of $66,000 pursuant to the terms of the Indenture and in addition thereto it incurred and paid in connection with said redemption legal and advertising expense amounting to the sum of $1,846.79. At the time of the aforesaid retirement in 1926, there existed unamortized debt expenses incurred in connection with the issuance and sale of said bonds in the amount of $16,157.30, of which the respondent amortized $747.79 in 1926, leaving $15,409.51 unamortized in 1926.

7. North Carolina Public Service Company, Inc., by indenture dated May 1, 1924, issued and sold its First Lien and Refunding Mortgage 6% Gold Bonds Series B due May 1, 1954, and incurred discount and expense of which there was unamortized at the time of the retirement the sum of $56,176.48, of which the respondent allowed as a deduction $489.52 in 1926, leaving $55,686.96 unamortized in 1926. The bonds were callable on any interest date on thirty days notice up to and including November 1, 1928 at 105, and pursuant to the terms of the indenture there were called and redeemed $570,500.00 (being the entire amount outstanding) principal amount of said First Lien and Refunding Mortgage 6% Gold Bonds Series B due May 1, 1954, at a premium of 105 and said taxpayer thereby incurred and paid a premium of $28,525.00. The petitioners claim the aforesaid amounts of premiums, debt retirement expense and unamortized debt discount and expense set forth in para-

graphs 5, 6, supra and 7, as deductions from the 1926 gross income of North Carolina Public Service Company, briefly summarized as follows:

[fol. 104]

Description of Debt Obligation Redeemed and Retired by the Petitioners' Affiliated Subsidiary, North Carolina Public Service Company in 1926	Principal Amount of the Debt Retired in 1926	Premium Accrued & Paid upon retirement in 1926	Expense Accrued & Paid upon retirement in 1926	Unamortized D. D. & E. at date of redemption
Piedmont Pr. & Lt. Co. First Mtg. Gold 6s and 7s by supplemental indenture which continued as a prior lien upon the acquisition of the issuing company's assets and assumption of its liabilities:				
7s	183,700	9,185.00)		6,017.66
6s	184,100	5,523.00)	2,112.50	
North Carolina Pub. Serv. Co., Inc., First Lien & Refund. Mtg. 6½% Gold Bonds Ser. A due February 1, 1944	880,000	66,000.00	1,846.79	15,409.51
North Carolina Public Serv. Co., Inc., First Lien & Refund. Mtg. 6s Gold Bonds Ser. B due May 1, 1954	570,000	28,525.00		55,686.96
Total	1,818,300	109,233.00	3,959.29	77,114.13
Total Premiums, Retirement Expense & Unamortized D. D. & E.				$190,306.42

8. Said amount of $190,306.42 was not taken as an expense on the books of the North Carolina Public Service Company, [fol. 105] but transferred to debt discount and expense applicable to the refunding issue. The funds used for the retirement and redemption of the bonds described in paragraphs 5, 6 and 7, supra, were from the proceeds of sale of the North Carolina Public Service Company First and Refunding Mortgage 5% Gold Bonds due July 1, 1956, of which there had been issued and sold up to October 1, 1926, bonds of the principal amount of $3,125,000.00.

9. The only issue submitted to the Board for redetermination in this proceeding is as follows: whether the respondent erred in refusing to allow as deductions from the gross income of your petitioners' aforesaid affiliated subsidiaries for the year 1926 the aforesaid premiums, retirement expense and unamortized debt discount and expense. All

other issues raised by the pleadings have been settled by agreement of the parties and the result of such settlement is reflected in the following stipulation as to the amounts of deficiencies, to wit:

a. If the action of the Respondent in disallowing the aforesaid premiums, debt retirement expense, and unamortized debt discount and expense is sustained the amount of the deficiency for the calendar year 1926 is $32,005.06.

b. If the aforesaid claims for deduction of premiums, debt retirement expense and unamortized debt discount and expense are decided in favor of the Petitioners, the amount of the overpayment is $9,268.30.

[fol. 106] If the Board's decision is otherwise than indicated in paragraphs "a" or "b" supra, the deficiency or overpayment should be determined under Board Rule 50.

Regardless of the decision of the foregoing questions, it is hereby stipulated and agreed that there is a deficiency for the period January 1, 1926 to April 30, 1926, against Binghamton Light, Heat and Power Company in the amount of $6,876.77, and that there is no deficiency or overpayment with respect to Docket No. 49,079, New Jersey Power & Light Company as successor by merger to Newton Gas Company.

The petitioner made the following payments on account of its federal income tax liability for the calendar year 1926:

Date of Payment	Amount of Payment
March 15, 1927	$6,075.00
June 15, 1927	47,207.71
September 15, 1927	26,641.35
December 16, 1927	26,641.36
Total	$106,565.42

The petitioner filed a claim for refund in the amount of $95,565.09 on March 13, 1930, with Collector of Internal Revenue, Custom House, New York City, N. Y.

Francis J. Sweeney, Counsel for Petitioner. (Signed) Robert H. Jackson, Counsel for Respondent.

[fol. 107] EXHIBIT "A" TO STIPULATION OF FACTS

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

STATE OF PENNSYLVANIA,
County of Dauphin, ss:

I, John G. Hopwood, Secretary of the Public Service Commission of the Commonwealth of Pennsylvania, do hereby certify that the papers hereto attached are true and correct copies of the report, order and certificate of public convenience issued by the Commission under date of March 9th, 1926, in re Application North Penn Power Company and Northern Pennsylvania Power Company, for approval of the sale of the franchises and property of the former to the latter company, as the same remain of record in the offices of the Commission, at Application Docket No. 13917-1925.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the Commission to be affixed hereto this twenty-fourth day of March, 1926.

John G. Hopwood, Secretary, The Public Service Commission of the Commonwealth of Pennsylvania.

[fol. 108] Form L 2—10M—8-4-25.
A.13917-1925.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

In the Matter of the Application of NORTH PENN POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY, under Section 3(c), Article III, and Sections 18 and 19, Article V, of The Public Service Company Law, for the Approval of the Sale of the Property and Franchises of the Former to the Latter Company.

Certificate of Public Convenience

The Public Service Commission of the Commonwealth of Pennsylvania, hereby certifies that after an investigation and hearing had on the above entitled application, it has, by its report and order made and entered, a copy of which

is hereto attached and made a part hereof, found and determined that the granting of said application is necessary and proper for the service, accommodation, convenience and [fol. 109] safety of the public, and this certificate is issued evidencing its approval of the said application as set forth in said report and order.

In Testimony Whereof, The Public Service Commission of The Commonwealth of Pennsylvania has caused these presents to be signed and sealed, and duly attested by its Secretary, at its office in the city of Harrisburg, this ninth day of March, 1926.

The Public Service Commission of the Commonwealth of Pennsylvania, (Signed) S. Ray Shelby, Acting Chairman.

Attest: (Signed) Jno. G. Hopwood, Secretary. (Seal.)

[fol. 110] THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

Application Docket No. 13917-1925

In re Application of NORTH PENN POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for the Approval of Sale of the Property and Franchises of the Former to the Latter Company.

Report and Order

By the COMMISSION:

This case being before the Commission upon petition of North Penn Power Company and Northern Pennsylvania Power Company, dated November 30, 1925, for the approval of sale of the property and franchises of the former to the latter company, as more fully described in the deed; and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, the Commission finds and determines that the granting of said petition is necessary and proper for the service, accommodation, convenience and safety of the public, and that a certificate of Public Convenience be is- [fol. 111] sued evidencing the Commission's approval thereof: Provided, that nothing in this proceeding which

fixes or tends to fix the value of the property of either the vendor or vendee companies or the manner in which the vendee company records the transaction on its books of account shall be binding upon the Commission in any future proceeding requiring a determination by it of the fair value of the property and franchises of either of the companies:

Now, to-wit, March 9, 1926, It is Ordered: That a Certificate of Public Convenience be issued evidencing the Commission's approval of the said sale in accordance with the deed.

The Public Service Commission of the Commonwealth of Pennsylvania, (Signed) S. Ray Shelby, Acting Chairman.

Attest: (Signed) Jno. G. Hopwood, Secretary. (Seal.)

[fol. 112] BEFORE THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

Application Docket No. 1925

In re Application of NORTH PENN POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for a Certificate of Public Convenience Evidencing the Commission's Approval of the Sale of the Franchise and Property of the Former to the Latter Company.

To the Public Service Commission of the Commonwealth of Pennsylvania:

The petition of North Penn Power Company and Northern Pennsylvania Power Company respectfully represents:

1. The names and addresses of your petitioners are as follows: North Penn Power Company, Borough of Blossburg, Tioga County, Pennsylvania; Northern Pennsylvania Power Company, 207 Main Street, Borough of Towanda, Bradford County, Pennsylvania.

2. The name and address of your petitioners' attorney are: Hedley V. Cooke, 31 Nassau Street, New York City.

[fol. 113] 3. Except as otherwise stated, each of the corporations hereinafter named was duly organized for the

purpose of supplying light, heat and power by means of electricity to the public in the borough, town, city or district in the Commonwealth of Pennsylvania in the particular case mentioned, and to such persons, partnerships and corporations residing therein or adjacent thereto as might desire the same, under the Act of April 29, 1874, P. L. 73 as amended by the Act of May 8, 1889, P. L. 136 and the amendments and supplements thereto and received letters patent granting to it perpetual existence, the articles of association having been in each case duly recorded in the proper county.

4. Your petitioner North Penn Power Company was duly organized under the Act of May 3, 1909, P. L. 408 and the amendments thereof and supplements thereto by merger and consolidation under agreement dated January 16, 1923 of the following corporations:

(1) The Blossburg Electric Light & Power Company (hereinafter called No. 2).

(2) The Mansfield Electric Company, which received letters patent dated October 14, 1897, for the Borough of Mansfield, Tioga County.

(3) Morris Run Electric Company, which received letters patent dated May 11, 1922 for the Township of Hamilton, Tioga County.

(4) Elkland Intertownship Electric Company, which re- [fol. 114] ceived letters patent dated January 15, 1923 for the Township of Elkland, Tioga County.

(5) Nelson Intertownship Electric Company, which received letters patent dated January 15, 1923 for the Township of Nelson, Tioga County.

(6) Lawrence Intertownship Electric Company, which received letters patent dated January 15, 1923 for the Township of Lawrence, Tioga County.

(7) Sullivan Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Sullivan, Tioga County.

(8) Osceola Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Osceola, Tioga County.

(9) Lawrenceville Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Lawrenceville, Tioga County.

(10) Richmond Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Richmond, Tioga County.

(11) Westfield Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Westfield, Tioga County.

[fol. 115] (12) Tioga Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Tioga, Tioga County.

(13) Elkland Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Elkland, Tioga County.

(14) Bloss Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Bloss, Tioga County.

(15) Duncan Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Duncan, Tioga County.

(16) Westfield Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Westfield, Tioga County.

(17) Knoxville Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Knoxville, Tioga County.

(18) Deerfield Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Deerfield, Tioga County.

(19) Tioga Intertownship Electric Company, which re-
[fol. 116] ceived letters patent dated January 15, 1923, for the Township of Tioga, Tioga County.

(20) Ward Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Ward, Tioga County.

The Blossburg Electric Light & Power Company No. 2 was duly organized under the Act of May 3, 1909, P. L. 408

and the amendments thereof and supplements thereto by merger and consolidation under agreement dated December 18, 1913, of:

(1) The Blossburg Electric Light & Power Company (No. 1) which received letters patent for the Borough of Blossburg, Tioga County, on December 6, 1897;

(2) The Covington Electric Light Company, which received letters patent for the Township of Covington, Tioga County, on November 24, 1913;

(3) Covington Township Electric Light Company, which received letters patent for the Borough of Covington, Tioga County (now Township of Putnam) on November 24, 1913;

all of which constituent companies last above mentioned had, in addition to their electric powers, the right to furnish heat by means of steam necessarily generated at their electric plants.

[fol. 117] Your petitioner North Penn Power Company heretofore acquired by purchase under the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876, P. L. 30, the franchises and all of the property real, personal and mixed of the following corporations:

(1) The Canton Illuminating Company, which received letters patent dated April 6, 1899, for the Borough of Canton, County of Bradford. Deed dated September 29, 1923, approved by your Honorable Commission at Application Docket 9356 of 1923.

(2) Troy Electric Light, Heat & Power Company, which received letters patent dated December 27, 1904, for the Borough of Troy, County of Bradford. Deed dated September 27, 1923, approved by your Honorable Commission at Application Docket No. 9355/1923.

(3) Galeton Electric Company, which received letters patent dated October 13, 1922, for the Borough of Galeton, County of Potter. Deed dated November 8, 1923, approved by your Honorable Commission at Application Docket No. 9729/1923.

(4) Union North Penn Power Company, which received letters patent on November 11, 1923, for the Township of Union, County of Tioga. Deed dated October 30, 1923, ap-

proved by your Honorable Commission at Application Docket No. 9536/1923.

[fol. 118] (5) Canton North Penn Power Company, which received letters patent on September 11, 1923, for the Township of Canton, County of Bradford. Deed without date, approved by your Honorable Commission at Application Docket No. 9534/1923.

(6) Armenia North Penn Power Company which received letters patent on September 12, 1923, for the Township of Armenia, County of Bradford. Deed dated October 30, 1923, approved by your Honorable Commission at Application Docket No. 9535/1923.

(7) Columbia Township Bradford Electric Company, which received letters patent on October 9, 1923, for the Township of Columbia, Bradford County. Deed dated August 27, 1925, approved by your Honorable Commission at Application Docket 13708 of 1925.

(8) Alba North Penn Power Company, which received letters patent on January 14, 1924 for the Township of Alba, Bradford County. Deed dated August 22, 1925, approved by your Honorable Commission at Application Docket No. 13706/1925.

(9) Troy Township Bradford Electric Company which received letters patent on October 9, 1923, for Troy Township, Bradford County. Deed dated August 27, 1925, approved by your Honorable Commission at Application Docket No. 13707/1925.

[fol. 119] Your petitioner North Penn Power Company has on authorized capital stock of (a) 20,000 shares of Series A 7% Cumulative Preferred stock of a par value of $50 each of which 2,538 shares were outstanding on October 31, 1925; (b) 1,200 shares of Series B 6% Non-cumulative Preferred stock of a par value of $50 each of which 851 shares were outstanding in the hands of the public and 15 shares were in the company's treasury on October 31, 1925; (c) 12,000 shares of Common stock all of which were on October 31, 1925, and now are outstanding.

Your said petitioner has an authorized indebtedness of $2,000,000, against which there was outstanding on October 31, 1925, an actual funded debt consisting of $562,000 principal amount of Thirty year 6% Sinking Fund Gold Bonds

secured by First Mortgage to Harrisburg Trust Company as Trustee, dated February 1, 1923, of which $9,300 principal amount were in the company's treasury.

5. Your petitioner, Northern Pennsylvania Power Company, was duly organized under the provisions of the Act of May 3, 1909, P. L. 408 and the amendments thereof and supplements thereto by merger and consolidation under the name Towanda Gas & Electric Company, pursuant to agreement dated July 1, 1920, of Towanda Gas & Water Company and Towanda Electric Illuminating Company, which merger your Honorable Commission approved by the issuance of a certificate of public convenience at Application Docket No. 4203 of 1920. Thereafter your said petitioner by proceedings duly had pursuant to the statute in such [fol. 120] case made and provided, changed its name to Northern Pennsylvania Power Company.

Said Towanda Gas & Water Company was incorporated by special Act of Assembly of the Commonwealth of Pennsylvania, approved April 13, 1859 being Act No. 711, Laws of 1859, which granted to said company "exclusive authority to supply with gas light or water the Borough of Towanda and its vicinity in the County of Bradford and such persons, partnerships and corporations, residing therein as may desire the same * * *."

Said Towanda Electric Illuminating Company was incorporated on December 27, 1889, and received letters patent for the Borough of Towanda, Bradford County.

Your petitioner Northern Pennsylvania Power Company heretofore acquired by purchase under the provisions of Section 23 of the General Corporation Act of 1874 as amended by Section 5 of the Act of April 17, 1876, P. L. 30, the franchises and all of the property real, personal and mixed, of the following corporations, and received deeds therefor dated August 20, 1925, which were approved by your Honorable Commission at Application Docket Nos. 13607 to 13626, both inclusive of 1925, and were duly recorded in Bradford County, Pennsylvania:

(1) Monroeton Electric Company, which received letters patent dated July 12, 1921, for the Borough of Monroe, Bradford County.

(2) South Towanda Electric Company, which received [fol. 121] letters patent dated July 12, 1921, for the Township of Towanda, Bradford County.

(3) North Towanda Electric Company, which received letters patent dated July 12, 1921, for the Township of North Towanda, Bradford County.

(4) West Burlington Township Electric Company, which received letters patent dated September 11, 1923, for the Township of West Burlington, Bradford County.

(5) Ulster Township Electric Company, which received letters patent dated September 19, 1923, for the Township of Ulster, Bradford County.

(6) Rome Borough Electric Company, which received letters patent dated September 11, 1923, for the Borough of Rome, Bradford County.

(7) Granville Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Granville, Bradford County.

(8) Wysox Electric Company, which received letters patent dated July 12, 1921, for the Township of Wysox, Bradford County.

(9) Burlington Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Burlington, Bradford County.

[fol. 122] (10) Orwell Township Electric Company, which received letters patent dated September 15, 1923, for the Township of Orwell, Bradford County.

(11) Sheshequin Township Electric Company, which received letters patent dated September 19, 1923, for a portion of the Township of Sheshequin, Bradford County.

(12) Herrick Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Herrick, Bradford County.

(13) Franklin Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Franklin, Bradford County.

(14) Powell Electric Company, which received letters patent dated July 12, 1921, for the Township of Monroe, Bradford County.

(15) Asylum Township Electric Company, which received letters patent dated January 23, 1924, for the Township of Asylum, Bradford County.

(16) Burlington Borough Electric Company, which received letters patent dated September 11, 1923, for the Borough of Burlington, Bradford County.

(17) Rome Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Rome, Bradford County.

[fol. 123] (18) Smithfield Township Electric Company, which received letters patent dated September 19, 1923, for a portion of the Township of Smithfield, Bradford County.

(19) Leroy Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Leroy, Bradford County.

(20) Standing Stone Township Electric Company, which received letters patent dated January 23, 1924, for the Township of Standing Stone, Bradford County.

Your petitioner Northern Pennsylvania Power Company has an authorized capital stock of 2,500 shares of 6% Cumulative Preferred Stock, having a par value of $50 each, of which 2,089 shares were outstanding in the hands of the public and 148 shares were in the company's treasury on October 31, 1925; 50,000 shares of $7 Cumulative Preferred stock without nominal or par value, no part of which has been issued; 50,000 shares of $6 Cumulative Preferred stock without nominal or par value, no part of which has been issued; and 100,000 shares of common stock without nominal or par value, of which 2,160 shares were outstanding in the hands of the public on October 31, 1925.

Your petitioner Northern Pennsylvania Power Company has an authorized indebtedness of $10,000,000, against which there was outstanding on October 31, 1925, an actual funded debt consisting of $50,000 principal amount of General First and Refunding 6% Gold Bonds of Towanda Gas [fol. 124] & Electric Company secured by mortgage to The Scranton Trust Company as Trustee dated October 1, 1921, of which $1,000 principal amount were in the company's treasury; and $1,000 principal amount of 5% First Mortgage Bonds of Towanda Electric Illuminating Company secured by mortgage to R. F. Page, Trustee, dated April 1, 1913.

6. General balance sheets of your petitioners as of October 31, 1925, and a statement of income and expenses

showing the results of the operations of your said petitioners during the year ending on October 31, 1925, are hereto attached, marked Exhibits "A", "B", "C" and "D".

7. A contract has been entered into under the provisions of Section 23 of the General Corporation Act of 1874 as amended by Section 5 of the Act of April 17, 1876, P. L. 30, for the sale by your petitioner North Penn Power Company to your petitioner Northern Pennsylvania Power Company of all of its franchises and property, real, personal and mixed, subject to all its debts, liabilities and duties. The consideration named in said contract is to be paid to the selling company for its stockholders and is as follows:

$50 and accrued dividends in cash for each share of Series A 7% Cumulative Preferred stock of the selling company with the privilege of taking in lieu thereof one-half of a share of the $7 Cumulative Preferred stock of the purchasing company, with apportionment of dividends thereon.

$55 in cash for each share of Non-Cumulative Preferred stock, Series B, of the selling company with the privilege of [fol. 125] taking in lieu thereof one-half of a share of the $7 Cumulative Preferred stock of the purchasing company with apportionment of dividends thereon.

9121 shares of the Common stock of the purchasing company for all of the Common stock of the selling company, all the holders of the latter having consented thereto.

Said contract consists of resolutions of the respective Boards of Directors of your petitioners, copies whereof marked Exhibits "E" and "F" are hereto attached. The said contract has been duly approved and ratified by the stockholders of your petitioner, North Penn Power Company as more fully appears by the election return relative thereto heretofore duly filed in the office of the Secretary of the Commonwealth of Pennsylvania.

8. Said sale is desired by the parties hereto because the same interests own the entire common stocks of your petitioners and their respective systems being in the same general locality, it is believed that by interconnecting and operating them under one management, economies can be effected which will at once result in bettering the service and benefitting the consuming public.

9. It is expected that the proposed transaction will materially improve the service now rendered by the parties hereto. The consolidation should result in added financial

strength and in the assurance of adequate sources of supply of electric energy which are not always accessible to a small isolated company.

10. The price of the franchises and property to be purchased as aforesaid will, so far as the same is payable in [fol. 126] cash, be paid by your petitioner Northern Pennsylvania Power Company out of the sale of its bonds and/or stock.

11. The proposed transaction will grant no franchise rights to the purchaser to furnish service in any locality where similar service is being rendered by a public service company other than the selling company or, so far as your petitioners are informed and believe, where any such other company has charter rights to furnish service.

12. The proposed sale is necessary and proper for the service, accommodation and convenience of the public for the reasons stated in paragraphs 7 and 8 hereof.

Wherefore, your petitioners pray your Honorable Commission to issue a certificate of public convenience under the provisions of Article III, Section 3(c) and Article V, Sections 18 and 19 of the Public Service Company Law, evidencing its approval of the purchase by your petitioner, Northern Pennsylvania Power Company, of all of the franchises and property of your petitioner, North Penn Power Company, and they will ever pray, etc.

North Penn Power Company, by Lucien H. Tyng, Vice-President. Northern Pennsylvania Power Company, by Lucien H. Tyng, Vice-President.

[fol. 127] EXHIBIT "E" TO PETITION

Resolutions of Board of Directors of North Penn Power Company

Whereas, Northern Pennsylvania Power Company, a Pennsylvania corporation engaged in the same line of business as this company, has offered to purchase the franchises and all the property, real, personal and mixed, of this company, subject to all its debts, liabilities and duties for a consideration payable to this company for its stockholders in

cash and/or the capital stock of the purchasing company as follows, to wit:

For each share of Series A 7% Cumulative Preferred Capital Stock of this company issued and outstanding there shall be paid to this company for the holder's account $50 in cash, plus the amount of all accumulated and accrued and unpaid dividends (being the amount to which said stock is by the terms of its issuance entitled upon dissolution of the company or liquidation or sale of its assets); with the privilege of returning such cash payment of $50 to Northern Pennsylvania Power Company at any time within six months from date of its receipt by this company and receiving in lieu thereof one-half of a share of the $7 Cumulative Preferred Stock of Northern Pennsylvania Power Company when, as and if authorized by the stockholders thereof, accrued dividends on such stock to be adjusted as of the date of the exchange.

For each share of Non-Cumulative Preferred Capital [fol. 128] Stock Series B of this company issued and outstanding there shall be paid to this company for the holders' account $55 in cash (being the amount to which said stock is by the terms of its issuance entitled in the event of dissolution or liquidation of its assets); with the privilege of returning such cash payment to Northern Pennsylvania Power Company at any time within six months from date of its receipt by this company and receiving in lieu thereof one-half of a share of the $7 Cumulative Preferred Stock of Northern Pennsylvania Power Company when, as and if authorized by the stockholders thereof, accrued dividends on such stock to be adjusted as of the date of the exchange.

For all of the issued and outstanding shares of common capital stock of this company, to wit: 12,000 shares without nominal or par value, there shall be issued and delivered to this company for account of the holders of said common stock pro rata, 9121 shares of the common stock of Northern Pennsylvania Power Company without nominal or par value, when, as and if authorized by the stockholders thereof; and

Whereas, it seems desirable to this Board to sell the said franchises and property on the said terms,

Resolved, that the aforesaid offer of Northern Pennsylvania Power Company be and the same hereby is accepted.

Further Resolved, that, the stockholders of this company consenting, the President or Vice President and Secretary or an Assistant Secretary be and they are hereby [fol. 129] authorized and directed, upon the payment and delivery to this company of the aforesaid consideration, to make, execute and deliver a deed of the franchises, and all the property, real, personal and mixed, of the company to Northern Pennsylvania Power Company, its successors and assigns, as the act and deed of this company.

Further Resolved, that a meeting of the stockholders be called to convene at the office of the Company in Blossburg, Pennsylvania, on the 18th day of November, 1925, at 11 o'clock A. M., to take action on approval or disapproval of the proposed sale, assignment, disposition and conveyance of its franchises and all its property, real, personal and mixed, to Northern Pennsylvania Power Company.

EXHIBIT "F" TO PETITION

Resolutions of Board of Directors of Northern Pennsylvania Power Company

Whereas, in the judgment of this Board it is desirable that this company should acquire the franchises and all the property, real, personal and mixed, of North Penn Power Company, a Pennsylvania corporation, and the same are of a value at least equal to the proposed consideration hereinafter mentioned,

Resolved, that this company hereby offers to purchase said franchises and all the property, real, personal and mixed, of said North Penn Power Company, subject to all [fol. 130] its debts, liabilities and duties for a consideration payable to said company for its stockholders in cash and/or stock of this company as follows:

For each share of Series A 7% Cumulative Preferred Capital Stock of said North Penn Power Company issued and outstanding there shall be paid to said company for the holder's account $50 in cash, plus the amount of all accumulated and accrued and unpaid dividends (being the amount to which said stock is by the terms of its issuance

entitled upon dissolution of the company or liquidation or sale of its assets); with the privilege of returning such cash payment to this company at any time within six months from date of its receipt by said North Penn Power Company and receiving in lieu thereof one-half of a share of the $7 Cumulative Preferred Stock of this company when, as and if authorized by the stockholders thereof, accrued dividends on such stock to be adjusted as of the date of the exchange.

For each share of Non-Cumulative Preferred Capital Stock Series B of said North Penn Power Company issued and outstanding there shall be paid to said company for the holder's account $55 in cash (being the amount to which said stock is by the terms of its issuance entitled in the event of dissolution or liquidation of its assets); ith the privilege of returning such cash payment to this company at any time within six months from date of its receipt by said North Penn Power Company and receiving in lieu thereof one-half of a share of the $7 Cumulative preferred stock of this company when, as and if authorized by the stockholders thereof, accrued dividends on such stock to be adjusted as of the date of the exchange.

[fol. 131] For all of the issued and outstanding shares of common capital stock of said North Penn Power Company, to wit: 12,000 shares, without nominal or par value, there shall be issued and delivered to said company for account of the holders of said common stock pro rata, 9121 shares of the common stock of this company without nominal or par value, when, as and if authorized by the stockholders thereof.

STATE OF NEW YORK,
County of New York, ss:

On this 25th day of November, 1925, before me, the subscriber, a notary public in and for the County of Queens, State of New York, and duly authorized to act as such in the County of New York, said State, personally appeared L. H. Tyng, who, being duly sworn according to law, deposes and says that he is a Vice-President of North Penn Power Company, one of the petitioners named in the foregoing petition and, as such, charged with the duty of verification of the statements contained therein, and that the said state-

ments and the exhibits attached thereto and made a part thereof, are true and correct.

Lucien H. Tyng.

Subscribed and sworn to before me the day aforesaid. William J. White, Notary Public, Queens County, Queens County Clerk's No. 3905. Certificate filed in New York County. Clerk's No. 97, Register's No. 7170. Commission expires March 30th, 1927. (Seal.)

[fol. 132] STATE OF NEW YORK,
County of New York, ss:

On this 25th day of November, 1925, before me, the subscriber, a notary public in and for the County of Queens, State of New York, and duly authorized to act as such in the County of New York, said State, personally appeared L. H. Tyng, who, being duly sworn according to law, deposes and says that he is a Vice-President of Northern Pennsylvania Power Company, one of the petitioners named in the foregoing petition and, as such, charged with the duty of the verification of the statements contained therein, and that the said statements and the exhibits attached thereto and made a part thereof, are true and correct.

Lucien H. Tyng.

Subscribed and sworn to before me the day aforesaid. William J. White, Notary Public, Queens County. Queens County Clerk's No. 3905. Certificate filed in New York County. Clerk's No. 97, Register's No. 7170. Commission expires March 30th, 1927. (Seal.)

[fol. 133] PUBLIC SERVICE COMMISSION, COMMONWEALTH OF PENNSYLVANIA

In re Application of NORTH PENN POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for a Certificate of Public Convenience Evidencing the Commission's Approval of the Sale of the Franchises and Property of the Former to the Latter Company

Petition

Cooke & Marvin, 31 Nassau Street, New York

Exhibit "B" to Stipulation of Facts

The Public Service Commission of the Commonwealth of Pennsylvania

State of Pennsylvania,
County of Dauphin, ss:

I, John G. Hopwood, Secretary of the Public Service Commission of the Commonwealth of Pennsylvania, do hereby certify that the papers hereto attached are true and correct copies of the report, order and certificate of public convenience issued by the Commission under date of June 8, 1926, in re: Application of the Susquehanna County Light & Power Company and Northern Pennsylvania Power Company for the approval of the sale of the franchises and property of the former to the latter company, as the same remain of record in the offices of the Commission at Application Docket No. 14271—1926.

[fol. 134] In Testimony Whereof, I have hereunto set my hand and caused the seal of the Commission to be affixed hereto this twenty-sixth day of June, 1926.

Jno. G. Hopwood, Secretary, The Public Service Commission of the Commonwealth of Pennsylvania. (Seal.)

The Public Service Commission of the Commonwealth of Pennsylvania

A. 14271—1926

In the Matter of the Application of Susquehanna County Light & Power Company and Northern Pennsylvania Power Company, under Section 3 (c), Article III, and Sections 18 and 19, Article V, of the Public Service Company Law, for the Approval of the Sale of the Franchises and Property of the Former to the Latter Company

Certificate of Public Convenience

The Public Service Commission of the Commonwealth of [fol. 135] Pennsylvania, hereby certifies that after an investigation and hearing had on the above entitled application, it has, by its report and order made and entered, a copy

of which is hereto attached and made a part hereof, found and determined that the granting of said application is necessary and proper for the service, accommodation, convenience and safety of the public, and this certificate is issued evidencing its approval of the said application as set forth in said report and order.

In Testimony Whereof, The Public Service Commission of the Commonwealth of Pennsylvania has caused these presents to be signed and sealed, and duly attested by its Secretary, at its office in the city of Harrisburg, this 8th day of June, 1926.

The Public Service Commission of the Commonwealth of Pennsylvania, (Signed) Wm. D. B. Ainey, Chairman.

Attest: (Signed) Jno. G. Hopwood, Secretary. (Seal.)

[fol. 136] THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

Application Docket No. 14271—1926

In re Application of the SUSQUEHANNA COUNTY LIGHT & POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for the Approval of the Sale of the Franchises and Property of the Former to the Latter Company

REPORT AND ORDER

By the COMMISSION:

This case being before the Commission upon petition of the Susquehanna County Light & Power Company and Northern Pennsylvania Power Company, dated March 17, 1926, for the approval of the sale of the franchises and property of the former to the latter company, as more fully described in and under the terms and conditions of deed executed by said Susquehanna County Light & Power Company, under date of March 17, 1926:

and having been duly heard and submitted by the parties, [fol. 137] and full investigation of the matters and things involved having been had, the Commission finds and determines that the granting of said petition is necessary and

proper for the service, accommodation, convenience and safety of the public, and that a certificate of Public Convenience be issued evidencing the Commission's approval thereof.

Now, to-wit, June 8, 1926, It is Ordered: That a Certificate of Public Convenience be issued evidencing the Commission's approval of the said sale in accordance with said deed hereto attached, as above determined.

The Public Service Commission of the Commonwealth of Pennsylvania, (Signed) Wm. D. B. Ainey, Chairman.

Attest: (Signed) Jno. G. Hopwood, Secretary. (Seal.)

[fol. 138] BEFORE THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

Application Docket No. 1926

In re Application of SUSQUEHANNA COUNTY LIGHT & POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for a Certificate of Public Convenience Evidencing the Commission's Approval of the Sale of the Franchises and Property of the Former to the Latter Company

To the Public Service Commission of the Commonwealth of Pennsylvania:

The petition of Susquehanna County Light & Power Company and Northern Pennsylvania Power Company respectfully represents:

1. The names and addresses of your petitioners are as follows: Susquehanna County Light & Power Company, Borough of Susquehanna, Susquehanna County, Pennsylvania; Northern Pennsylvania Power Company, 207 Main Street, Borough of Towanda, Bradford County, Pennsylvania.

2. The name and address of your petitioners' attorney are Hedley V. Cooke, 31 Nassau Street, New York City

[fol. 139] 3. Except as otherwise stated each of the corporations hereinafter named was duly organized for the purpose of supplying light, heat and power by means of elec-

tricity in the borough, town, city or district in the Commonwealth of Pennsylvania in the particular case mentioned and to such persons, partnerships and corporations residing therein or adjacent thereto as might desire the same, under the Act of April 29th, 1874, P. L., 73 as amended by the Act of May 8th, 1889, P. L., 136 and the amendments thereof and supplements thereto, and received letters patent granting to it perpetual existence, the articles of association having been in each case duly recorded in the proper county.

4. Your petitioner, Susquehanna County Light & Power Company received letters patent dated December 8th, 1913 for Oakland Borough, Susquehanna County.

Your said petitioner thereafter acquired by purchase under the provisions of Section 23 of the General Corporation Act of 1874 as amended by Section 5 of the Act of April 17th, 1876, P. L., 30, the franchises and all of the property, real, personal and mixed of the following corporations:

(1) Susquehanna County Electric Company hereinafter called No. (2), pursuant to consent of stockholders given on December 15, 1913.

(2) Lanesboro Light & Power Co., which received letters [fol. 140] patent dated December 8th, 1913, for the Borough of Lanesboro, County of Susquehanna, pursuant to consent of stockholders given on December 15th, 1913.

(3) Great Bend Light & Power Co., which received letters patent dated December 8th, 1913, for the Borough of Great Bend, County of Susquehanna, pursuant to consent of stockholders given on December 15th, 1913.

(4) Oakland Township Light & Power Co., which received letters patent dated December 8th, 1913, for the Township of Oakland, County of Susquehanna, pursuant to consent of stockholders given on December 15th, 1913.

(5) Great Bend Township Light & Power Co., which received letters patent dated December 8th, 1913, for the Township of Great Bend, County of Susquehanna, pursuant to consent of stockholders given on December 15th, 1913.

(6) New Milford Township Light & Power Company, which received letters patent dated December 8th, 1913, for the Township of New Milford, County of Susquehanna, pur-

suant to consent of stockholders given on December 15th, 1913.

(7) Bridgewater Township Light & Power Company, which received letters patent dated December 8th, 1913, for the Township of Bridgewater, County of Susquehanna, pur-
[fol. 141] suant to consent of stockholders given on December 15th, 1913.

(8) New Milford Light & Power Company, which received letters patent dated December 8th, 1913, for the Borough of New Milford, County of Susquehanna, pursuant to consent of stockholders given on December 15th, 1913.

(9) Oakland Light & Power Co., which received letters patent dated December 30th, 1913, for the Borough of Montrose, County of Susquehanna, pursuant to consent of stockholders given on December 15th, 1913.

(10) Montrose Electric Light Heat & Power Company which received letters patent dated March 23rd, 1897 for the Borough of Montrose, County of Susquehanna, pursuant to consent of stockholders given on December 15th, 1913.

Susquehanna County Electric Company No. (2) was duly organized under the Act of May 29th 1901, P. L. 349 and the amendments thereof and supplements thereto by merger and consolidation under agreement dated July 31st, 1902, of:

(1) Susquehanna County Electric Company No. (1) which received letters patent on July 28th, 1902, for Susquehanna Borough, Susquehanna County, Pennsylvania:

[fol. 142] (2) Union Electric Company, which received letters patent dated November 21st, 1894, for Hallstead Borough, said Susquehanna County, Pennsylvania.

Your petitioner, Susquehanna County Light & Power Company has an authorized capital stock of (a) 1150 shares of 7% Cumulative Preferred stock, of the par value of $100 each all of which has been issued and is outstanding; (b) 3000 shares of Common stock of the par value of $100 each all of which has been issued and is outstanding.

Your said petitioner has an authorized indebtedness of $600,000 against which there was outstanding on December 31, 1925, an actual funded debt consisting of $600,000 of Thirty Year 6% Gold Bonds due December 15th, 1943, se-

cured by a closed first mortgage dated December 15th, 1913, to Scranton Trust Company, as Trustee.

5. Your petitioner, Northern Pennsylvania Power Company, was duly organized under the provisions of the Act of May 3, 1909, P. L., 408 and the amendments thereof and supplements thereto by merger and consolidation under the name Towanda Gas & Electric Company, pursuant to agreement dated July 1, 1920 of Towanda Gas & Water Company and Towanda Electric Illuminating Company, which merger your Honorable Commission approved by the issuance of a certificate of public convenience at Application Docket No. 4205 of 1920. Thereafter your said petitioner by proceedings duly had pursuant to the statute in such case made [fol. 143] and provided changed its name to Northern Pennsylvania Power Company.

Said Towanda Gas & Water Company was incorporated by special Act of Assembly of the Commonwealth of Pennsylvania, approved April 13, 1859, being Act No. VII, Laws of 1859, which granted to said company "exclusive authority to supply with gas light or water the Borough of Towanda and its vicinity in the County of Bradford, and such persons, partnerships and corporations, residing therein as may desire the same • • •."

Said Towanda Electric Illuminating Company was incorporated on December 27, 1889, and received letters patent for the Borough of Towanda, Bradford County.

Your petitioner, Northern Pennsylvania Power Company heretofore acquired by purchase under the provisions of Section 23 of the General Corporation Act of 1874 as amended by Section 5 of the Act of April 17, 1876, P. L., 30, the franchises and all of the property real, personal and mixed, of the following corporations, and received deeds therefor dated August 20, 1925, which were approved by your Honorable Commission at Application Docket Nos. 13607 to 13626, both inclusive of 1925, and were duly recorded in Bradford County, Pennsylvania:

(1) Monroeton Electric Company which received letters patent dated July 12, 1921, for the Borough of Monroe, Bradford County.

(2) South Towanda Electric Company, which received [fol. 144] letters patent dated July 12, 1921, for the Township of Towanda, Bradford County.

(3) North Towanda Electric Company, which received letters patent dated July 12, 1921, for the Township of North Towanda, Bradford County.

(4) West Burlington Township Electric Company, which received letters patent dated September 11, 1923, for the Township of West Burlington, Bradford County.

(5) Ulster Township Electric Company, which received letters patent dated September 19, 1923, for the Township of Ulster, Bradford County.

(6) Rome Borough Electric Company, which received letters patent dated September 11, 1923, for the Borough of Rome, Bradford County.

(7) Granville Township Electric Company, which received letters patent September 11, 1923, for the Township of Granville, Bradford County.

(8) Wysox Electric Company, which received letters patent dated July 12, 1921 for the Township of Wysox, Bradford County.

(9) Burlington Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Burlington, Bradford County.

[fol. 145] (10) Orwell Township Electric Company, which received letters patent dated September 15, 1923, for the Township of Orwell, Bradford County.

(11) Sheshequin Township Electric Company, which received letters patent dated September 19, 1923, for a portion of the Township of Sheshequin, Bradford County.

(12) Herrick Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Herrick, Bradford County.

(13) Franklin Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Franklin, Bradford County.

(14) Powell Electric Company, which received letters patent dated July 12, 1921, for the Township of Monroe, Bradford County.

(15) Asylum Township Electric Company, which received letters patent dated January 23, 1924, for the Township of Asylum, Bradford County.

(16) Burlington Borough Electric Company, which received letters patent dated September 11, 1923, for the Borough of Burlington, Bradford County.

(17) Rome Township Electric Company, which received letters patent dated September 11, 1923, for the Township [fol. 146] of Rome, Bradford County.

(18) Smithfield Township Electric Company, which received letters patent dated September 19, 1923, for a portion of the Township of Smithfield, Bradford County.

(19) Leroy Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Leroy, Bradford County.

(20) Standing Stone Township Electric Company, which received letters patent dated January 23, 1924, for the Township of Standing Stone, Bradford County.

(21) Towanda Gas Company which was incorporated for the purpose of manufacturing and supplying gas for heat and fuel to the public in the Borough of Towanda and received letters patent on October 22, 1925. Deed to Northern Pennsylvania Power Company, dated November 21, 1925, approved at Application Docket No. 13912 of 1925.

Your petitioner Northern Pennsylvania Power Company has an authorized capital stock of 2,500 shares of 6% Cumulative Preferred Stock, having a par value of $50 each, of which 2,089 shares were outstanding in the hands of the public and 148 shares were in the company's treasury on October 31, 1925; 50,000 shares of $7 Cumulative Preferred [fol. 147] stock without nominal or par value, no part of which has been issued; 50,000 shares of $6 Cumulative Preferred stock without nominal or par value, no part of which has been issued; and 100,000 shares of common stock without nominal or par value, of which 2,160 shares were outstanding in the hands of the public on October 31, 1925.

Your petitioner Northern Pennsylvania Power Company has an authorized indebtedness of $10,000,000, against which there was outstanding on October 31, 1925, an actual funded debt consisting of $50,000 principal amount of General First and Refunding 6% Gold Bonds of Towanda Gas & Electric Company secured by mortgage to The Scranton Trust Company as Trustee dated October 1, 1921, of which $1,000 principal amount were in the company's treasury.

6. General balance sheets of your petitioners as of December 31, 1925, and a statement of income and expenses showing the results of the operations of your said petitioners during the year ending on December 31, 1925, are hereto attached, marked Exhibits "A", "B", "C" and "D".

7. A contract has been entered into under the provisions of Section 23 of the General Corporation Act of 1874 as amended by Section 5 of the Act of April 17, 1876, P. L. 30, for the sale by your petitioner, Susquehanna County Light & Power Company to your petitioner, Northern Pennsylvania Power Company of all of its franchises and property, real, personal and mixed, subject to all its debts, liabilities [fol. 148] and duties. The consideration named in said contract is to be paid to the selling company for its stockholders and is as follows:

For all of the capital stock of the selling company, to wit 5000 shares each having a par value of $100, 1150 shares of the $7 Cumulative Preferred stock of the purchasing company without nominal or par value, accrued dividends thereon to be adjusted as of the date of the exchange; and 2095 shares of the common stock of the selling company without nominal or par value.

Said contract consists of resolutions of the respective board of directors of your petitioners, copies whereof marked Exhibits "E" and "F" are hereto attached. The said contract has been duly approved and ratified by the stockholders of your petitioner, Susquehanna County Light & Power Company, as more fully appears by the election return relative thereto heretofore filed in the office of the Secretary of the Commonwealth of Pennsylvania.

8. Said sale is desired by the parties hereto because, the same interests owing the entire common stocks and voting control of your petitioners, but as separate units, and their respective systems being adjacent to each other, it is believed that by physically inter-connecting and operating them from one general office, economies and co-ordination can be effected which will at once result in bettering the service and thus benefitting the consuming public.

9. It is expected that the proposed transaction will materially improve the service now rendered by your peti- [fol. 149] tioners. The consolidation should also result in added financial strength and in the assurance of adequate

sources of supply of electric energy which are not always available to companies of moderate size.

10. The price of the franchises and property to be purchased will as aforesaid be paid entirely in stock of the purchasing company with the consent of all of the stockholders of your petitioner, Susquehanna County Light & Power Company.

11. The proposed transaction will grant no franchise rights to the purchaser to furnish service in any locality where similar service is being rendered by a public service company other than the selling company, or, so far as your petitioners are informed and believe where any such other company has charter rights to furnish service.

12. The proposed sale is necessary and proper for the service, accommodation and convenience of the public for the reasons stated in paragraphs 7 and 8 hereof.

Wherefore, your petitioners pray your Honorable Commission to issue a certificate of public convenience under the provisions of Article III., Section 3(c) and Article V., Sections 18 and 19 of the Public Service Company Law, evidencing its approval of the purchase by your petitioner, Northern Pennsylvania Power Company, of all of the fran-[fol. 150] chises and property of your petitioner, Susquehanna County Light & Power Company, and they will ever pray, etc.

Susquehanna County Light & Power Company, by Lucien H. Tyng, President. Northern Pennsylvania Power Company, by Lucien H. Tyng, Vice-President.

EXHIBIT "A" TO PETITION

Northern Pennsylvani . Power Company

General Balance Sheet—December 31, 1925

Assets

Property		$456,182.36
Current and Working Assets:		
Cash	$17,509.24	
Notes and Accounts Receivable	14,117.39	

Materials and Supplies	15,382.61	
Miscellaneous	764.88	
		47,774.12
Undistributed Debit Items		13,332.74
Total		$517,289.22

[fol. 151] Liabilities

Capital Stock:		
Six Per Cent. Cumulative Preferred	$104,450.00	
Common	213,076.95	
		$317,526.95
Payments by Subscribers for Preferred Stock		777.50
Funded Debt:		
Towanda Gas & Electric Co. General First & Refunding Mortgage Bonds due Oct 1, 1961		49,000.00
Current Liabilities:		
Loans Payable	$36,500.00	
Accounts Payable	5,746.91	
Miscellaneous	1,043.30	
		43,290.21
Accrued Liabilities:		
Taxes	$5,216.74	
Miscellaneous	2,282.26	
		7,499.00
Reserves:		
Depreciation	$41,545.98	
Miscellaneous	132.83	
		41,678.81
Surplus		57,516.75
Total		$517,289.22

[fol. 152] EXHIBIT "B" TO PETITION

Northern Pennsylvania Power Company

Statement of Income and Profit and Loss Accounts For Year Ended December 31, 1925

Income Account

Operating Revenue		$113,427.41
Operating Expenses and Taxes:		
Operating Expenses	$65,032.88	
Taxes	5,689.45	
		70,722.33
Operating Income		$42,705.08
Other Income		44.68
Total Income		$42,749.76
Deductions from Income:		
Interest on Funded Debt	$4,742.50	
Miscellaneous	648.15	
		5,390.65
Net Income		$37,359.11

[fol. 153] Profit and Loss Account

Surplus, January 1, 1925	$22,266.13
Net Income (Transferred from Income Account)	37,359.11
Miscellaneous Credits	10,259.50
Total	$69,884.74
Deductions:	
Preferred Stock Dividends	$6,261.00
Miscellaneous	6,106.99
	12,367.99
Surplus, December 31, 1925	$57,516.75

Exhibit "C" to Petition

Susquehanna County Light and Power Company

General Balance Sheet—December 31, 1925

Assets

Property		$1,130,036.32
Current and Working Assets:		
Cash	$5,703.96	
Accounts Receivable	23,049.46	
Materials and Supplies	7,055.63	
Miscellaneous	2,102.39	
		37,911.44
Unamortized Discount and Expense		21,096.91
Undistributed Debit Items		5,872.62
Total		$1,194,917.29

[fol. 154]

Liabilities

Common Capital Stock		$300,000.00
Funded Debt:		
First Mortgage 30 Year 6% Gold Bonds due December 15, 1943		600,000.00
Current Liabilities:		
Loans Payable	$150,893.86	
Accounts Payable	12,000.66	
Consumers' Deposits	4,384.18	
Loans from Consumers Payable in Installments	7,293.49	
Miscellaneous	3,292.55	
		177,864.24
Accrued Liabilities:		
Taxes	$7,582.09	
Insurance	5,171.00	
Interest on Funded Debt	8,513.94	
Miscellaneous	716.56	
		21,983.59

Reserves:		
Depreciation	$43,551.74	
Miscellaneous	34.86	
		43,586.60
Surplus		51,482.86
Total		$1,194,917.29

[fol. 155] EXHIBITION "D" TO PETITION

Susquehanna County Light and Power Company

Statement of Income and Profit and Loss Accounts For Year Ended December 31, 1925

Income Account

Operating Revenue		$181,081.55
Operating Expenses and Taxes:		
Operating Expenses	$106,371.83	
Taxes	3,917.26	
		110,289.09
Operating Income		$70,792.46
Other Income		43.41
Total Income		$70,835.87
Deductions from Income:		
Interest on Funded Debt	$36,044.00	
Interest on Notes Payable	7,882.65	
Amortization of Discount and Expense	1,174.80	
Miscellaneous	287.42	
		45,388.87
Net Income		$25,447.00

[fol. 156] Profit and Loss Account

Surplus, January 1, 1925		$36,235.86
Net Income (Transferred from Income Account)		25,447.00
Miscellaneous Credit		1,000.00
Total		$62,682.86
Deductions:		
Depreciation	$10,000.00	
Miscellaneous	1,200.00	
		11,200.00
Surplus, December 31, 1925		$51,482.86

EXHIBIT "H" TO PETITION

Resolution of the Board of Directors of Northern Pennsylvania Power Company

Whereas, in the judgment of this Board it is desirable that this company should acquire the franchises and all the property, real, personal and mixed, of Susquehanna County Light & Power Company, a Pennsylvania corporation, and the same are of a value at least equal to the proposed consideration hereinafter mentioned,

Resolved, that this company hereby offers to purchase said franchise and all the property, real, personal and mixed, of said Susquehanna County Light & Power Com-
[fol. 157] pany, subject to all its debts, liabilities and duties for a consideration payable to said company for its stockholders in stock of this company as follows:

For all of the issued and outstanding shares of capital stock of said Susquehanna County Light & Power Company, to wit, 5,000 shares each having a par value of $100, there shall be issued and delivered to said company for account of the holders of said stock pro rata 1150 shares of the $7 Cumulative Preferred stock of this company without nominal or par value, accrued dividends on said stock to be adjusted as of the date of the exchange; and 2,095

shares of the common stock of this company without nominal or par value.

EXHIBIT "I" TO PETITION

Resolutions of the Board of Directors

Susquehanna County Light & Power Company

"Whereas, Northern Pennsylvania Power Company, a Pennsylvania corporation engaged in the same line of business as this company, has offered to purchase the franchises and all the property, real, personal and mixed, of this company, subject to all its debts, liabilities and duties for a consideration deliverable to this company for its stockholders in the capital stock of the purchasing company as follows, to wit:

"For all of the issued and outstanding shares of capital stock of this company, to wit: 5,000 shares each having a [fol. 158] par value of $100, there shall be issued and delivered to this company for account of the holders of said stock pro rata 1150 shares of the $7 Cumulative Preferred stock of Northern Pennsylvania Power Company without nominal or par value, accrued dividends on said stock to be adjusted as of the date of the exchange; and 2,095 shares of the common stock of Northern Pennsylvania Power Company without nominal or par value; and

"Whereas, it seems desirable to this Board to sell the said franchise and property on the said terms,

"Resolved, that the aforesaid offer of Northern Pennsylvania Power Company be and the same hereby is accepted.

"Further Resolved, that a meeting of the stockholders be called to convene at the office of the Company in the Borough of Susquehanna, Susquehanna County, Pennsylvania, on the 25th day of January, 1926, at 11 o'clock a. m., to take action on approval or disapproval of the proposed sale, assignment, disposition and conveyance of its franchises and all its property, real, personal and mixed, to Northern Pennsylvania Power Company, the holders of all of the capital stock of this company having waived all notice of such meeting."

STATE OF NEW YORK,
County of New York, ss:

On this 17 day of March, 1926, before me, the subscriber, a notary public in and for the County of Westchester, State [fol. 159] of New York, and duly authorized to act as such in the County of New York, said State, personally appeared L. H. Tyng, who, being duly sworn, according to law, deposes and says that he is President of Susquehanna County Light & Power Company, one of the petitioners named in the foregoing petition, and as such charged with the duty of the verification of the statements contained therein, and that the said statements and the exhibits attached thereto and made a part thereof, are true and correct.

Lucien H. Tyng.

Subscribed and sworn to before me the day aforesaid. Helen O'Brien, Notary Public, Westchester Co. New York County Clerk's No. 150. New York Register's No. 6101. Commission expires March 30, 1926.

STATE OF NEW YORK,
County of New York, ss:

On this 17 day of March, 1926, before me, the subscriber, a notary public in and for the County of Westchester, State of New York, and duly authorized to act as such in the County of New York, said State, personally appeared L. H. Tyng, who, being duly sworn, according to law, deposes and says that he is a Vice President of Northern Pennsylvania Power Company, one of the petitioners named in the foregoing petition and, as such, charged with the duty of the [fol. 160] verification of the statements contained therein, and that the said statements and the exhibits attached thereto and made a part thereof, are true and correct.

Lucien H. Tyng.

Subscribed and sworn to before me the day aforesaid. Helen O'Brien, Notary Public, Westchester Co. New York County Clerk's No. 150. New York Register's No. 6101. Commission expires March 30, 1926.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

In re Application of SUSQUEHANNA COUNTY LIGHT & POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for a Certificate of Public Convenience Evidencing the Commission's Approval of the Sale of the Franchises and Property of the Former to the Latter Company

Petition

Hedley V. Cooke, 31 Nassau Street, New York City

[fol. 161] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket Nos. 49,079, 52,639, 52,680, 59,469, 59,470

GENERAL GAS & ELECTRIC CORPORATION, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

NEW JERSEY POWER & LIGHT COMPANY, as Successor by Merger to Newton Gas Company, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

BINGHAMTON LIGHT, HEAT & POWER COMPANY, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Francis J. Sweeney, Esq., for the Petitioners.
Chester A. Gwinn, Esq., for the Respondent.

MEMORANDUM OPINION

DISNEY:

These proceedings were duly consolidated for hearing and report and involve the redetermination of deficiencies [fol. 162] in income taxes as follows:

Petitioner	Docket No.	Year	Deficiency
General Gas & Electric Corporation	52639	1926	$90,169.05
	59469	1927	277,903.82
New Jersey Power & Light Co.	49079	1/1/26 to 12/1/26	478.70
Binghamton Light, Heat & Power Co.	52680	1926	34,826.71
	59470	1927	32,898.52

All of the facts have been stipulated.

The General Gas & Electric Company, a Delaware corporation, hereinafter referred to as the petitioner, is, and was at all times material, engaged in the business of holding securities and thus controlling public utility subsidiaries. The petitioners, with their affiliated taxpayers, filed consolidated income tax returns for 1926 and 1927. The affiliated taxpayers included the Susquehanna County Light & Power Co., formerly a Pennsylvania corporation; the North Carolina Public Service Co., Inc., a North Carolina corporation; the North Penn Power Co., formerly a Pennsylvania corporation; the Northern Pennsylvania Power Co., a Pennsylvania corporation; and the New Jersey Power and Light Co., a New Jersey corporation.

The North Penn Power Co. in 1923 issued and sold its First Mortgage Thirty Year 6% Sinking Fund Gold Bonds due February 1, 1953, at a discount and also incurred expenses of issue and sale. The bonds were redeemable at 105 per cent of their face amount or any interest date up to February 1, 1933.

In 1926 the Northern Pennsylvania Power Co., an affiliated subsidiary of the petitioner, acquired all of the assets and assumed all of the liabilities of the North Penn Power [fol. 163] Co., including its liability on these bonds, which constituted a prior lien on the assets taken over. The principal amount of the bonds outstanding at the time of the transfer was $552,700. Other consideration for the transfer was cash from the transferee for the retirement of the preferred stock of the transferor and common stock of the transferee, which was issued in exchange for common stock of the transferor.

Subsequently in 1926 the Northern Pennsylvania Power Co. retired $368,900 principal amount of the bonds at 105 per cent of their face value, or at a premium of $18,445, plus accrued interest to the date of retirement. In 1927 it retired the remaining bonds, $183,800 face amount, at the same price, or at a premium of $9,190.

On and after December 15, 1913, the Susquehanna County Light & Power Co. issued and sold $600,000 of its first mortgage 6 per cent gold bonds due December 15, 1943, incurring debt discount and expenses incident to the issue and sale. In 1926 the Northern Pennsylvania Power Co. acquired all of the assets and assumed all of the liabilities of the Susquehanna County Light & Power Co., including its liability on

all of these bonds, which constituted a prior lien on the assets transferred. Other consideration paid for the assets was preferred and common stock of the transferee, which was exchanged for common stock of the transferor. The Susquehanna County Light & Power Co. had no outstanding preferred stock. In 1926 the Northern Pennsylvania Power Co. redeemed all of the bonds at 105 per cent of their prin- [fol. 164] cipal amount, or at a premium of $30,000, in accordance with terms of the trust indenture.

The funds for the retirement of the North Penn Power Co. and the Susquehanna County Light & Power Co. bonds were obtained from the sale in 1926 of $1,950,000 principal amount of Northern Pennsylvania Power Co. first and refunding bonds, Series A, due June 1, 1956.

The unamortized debt discount and expense incurred by the North Penn Power Co. and the Susquehanna County Light & Power Co. in connection with the issuance and sale of the bonds was transferred as a deferred charge asset on the books of the transferee.

At the time of retirement in 1926 by the Northern Pennsylvania Power Co. of $368,900 principal amount of bonds issued by the North Penn Power Co. and $600,000 principal amount of bonds of the Susquehanna County Light & Power Co., the balance of the unamortized debt discount and expense applicable thereto were $70,499.79 and $20,509.51, respectively. The debt discount of $70,499.79 on the $552,700 North Penn Power Co. bonds retired in 1926 and 1927, together with the premium of $27,635 paid in the redemptions, was not taken as an expense on the books of the Northern Pennsylvania Power Co., but were transferred to debt discount and expense applicable to the refunding issue. Of the amount of $20,509.51 of unamortized debt discount and expense incurred in the issuance and sale of the Susquehanna County Light & Power Co. bonds, in 1926 the Northern Pennsylvania Power Co. deducted $587.40, leaving an unamortized amount of $19,922.11.

The transfers of assets and liabilities of the North Penn [fol. 165] Power Co. and the Susquehanna County Light & Power Co. to the Northern Pennsylvania Power Co. were made under the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876, P. L. 30 of the Laws of Pennsylvania, with the sanction and approval of the Public Service Commission of Pennsylvania under Section 3 (c) Article III and Sections 18 and 19, Article V of the Public Service Com-

pany Law with the issuance of a report, order and certificate of public convenience.

The Piedmont Power & Light Co., formerly a North Carolina corporation, in 1919 issued and sold its first mortgage 15 year Sinking Fund Gold 6% series bonds. In 1921 by supplemental indenture it provided for the issuance and sale of a 7 per cent series with the right to convert the 7 per cent series, at the holder's option, into the 6 per cent series upon payment by the corporation of an 8 per cent cash premium at conversion.

In 1924 the North Carolina Public Service Co., Inc., purchased the assets and assumed the liabilities of the Piedmont Power & Light Co., including the mortgage liability under the original and supplemental indenture. In 1925 and 1926 the North Carolina Public Service Co., Inc., incurred debt discount of $6,884.50 by paying an 8 per cent cash premium for the conversion of 7 per cent bonds into 6 per cent bonds. The unamortized portion of this amount in 1926 was $6,017.66.

On November 1, 1926, $183,700 of the 7 per cent bonds were retired at 105 and $184,100 of the 6 per cent bonds [fol. 166] were retired at 103, the premiums paid being $9,185 on the former and $5,523 on the latter. In addition thereto the North Carolina Public Service C ., Inc., paid legal and advertising expenses of $2,112.50 in connection with the redemption.

In 1924 the North Carolina Public Service Co., Inc., issued and sold its first lien and refunding gold 6½ per cent Series A bonds due February 1, 1944, callable on any interest date to and including February 1, 1929, at 107½. In 1926 it redeemed $880,000 (the whole amount outstanding) of the bonds at a premium of $66,000 pursuant to the terms of the indenture, and incurred and paid legal and advertising expenses of $1,846.79 in connection with the retirement. At the time the bonds were retired there existed unamortized debt expenses incurred in connection with the issuance and sale of said bonds in the amount of $16,157.30, of which the respondent amortized $747.79 in 1926, leaving $15,409.51 unamortized in 1926.

In 1924 the North Carolina Public Service Co., Inc., issued and sold its first lien and refunding mortgage 6 per cent gold bonds Series B, due May 1, 1954, callable on any interest date on 30 days notice up to and including November 1, 1928, at 105. In 1926 it redeemed $570,500 (the entire amount outstanding) of the bonds at 105 or at a premium of

$28,525. The unamortized discount and expense at the time of the retirement was $56,176.48, of which the respondent allowed $489.52 as a deduction in 1926, leaving a balance of $55,686.96.

The funds used by the North Carolina Public Service Co., Inc., for the redemption of the bonds issued by the Piedmont [fol. 167] Power & Light Co. and the bonds issued by it, were from the proceeds of sale of bonds up to October 1, 1926, in the principal amount of $3,125,000.

From 1916 to 1925, inclusive, the New Jersey Power & Light Co., a New Jersey corporation organized in 1915 issued and sold to the public its first mortgage 5 per cent gold bonds, due February 1, 1936, of the face amount of $2,689,000 for $2,315,635, or at a total discount of $373,365. In 1927 it retired all of the outstanding bonds, amounting to $2,087,000, at 105 in accordance with the terms of the indenture under which they were issued, thereby paying a premium of $104,350. The funds for the retirement of the bonds were obtained from the sale on December 29, 1926, of $6,000,000 principal amount of New Jersey Power & Light Co. 5 per cent first mortgage bonds due August 1, 1936. None of the bonds redeemed were held by corporations affiliated with the petitioners. At the time the bonds were redeemed the unamortized debt discount and expense incurred in connection with their issue amounted to $179,687.23, of which the respondent allowed $9,470.42 as amortization over the life of the new issue of bonds, leaving a balance of $170,216.81.

The parties to these proceedings have stipulated that there is no deficiency or overpayment of income tax in Docket No. 49,079, involving the New Jersey Power & Light Co. as successor by merger to the Newton Gas Co., and that there is a deficiency of $6,876.77 in income tax against the Binghamton Light, Heat & Power Co., Docket No. 52,680, for the period January 1, 1926, to April 30, 1926. Decisions will be entered accordingly.

[fol. 168] Appropriate agreements have been entered into under which the income tax liability of each of the petitioners for the taxable years is to be paid by the General Gas & Electric Corporation, the parent corporation. The stipulations of the parties settle all of the issues raised by the pleadings except the question of whether the several amounts shown above as unamortized debt discount and expense at the time the bonds were retired, less amounts allowed by the respondent, and premiums and legal and ad-

vertising expenses incurred in connection with the redemptions, are deductible from gross income of the respective corporations which retired the securities. The question involves items relating to bonds issued in the first instance by the redeeming corporation and securities of other corporations assumed by the redeeming corporation.

Bonds of Redeeming Corporation

Under this subdivision of the issue, the following amounts are claimed as deductions from gross income of the corporations which issued and redeemed the bonds:

		Bonds	Premiums	Retirement Expense	Unamortized debt Discount & Expense
North Carolina Public Service Co., Inc.....	1926	$880,000	$66,000	$1,846.79	$15,409.51
	"	570,500	28,525		55,686.96
New Jersey Power & Light Co.....	1927	2,087,000	104,350		170,216.81

The respondent elected not to argue the question in view of the holdings of this Board and the courts contrary to the position he has taken. The deductibility of the premiums and unamortized debt discount is controlled by Metropolitan Edison Co., 35 B. T. A. (No. 143), and the cases cited therein on the first question, and the expense incurred in [fol. 169] retiring the bonds is ruled by Coast Counties Gas & Electric Co., 33 B. T. A. 1199. Following those cases the claimed deductions are allowed.

Bonds Assumed by Redeeming Corporations

This point involves the deduction of premiums, retirement expense and unamortized debt discount and expense relating to bonds of the North Penn Power Co. and the Susquehanna County Light & Power Co. assumed and subsequently redeemed by the Northern Pennsylvania Power Co. and bonds issued by the Piedmont Power & Light Co. which were assumed and retired by the North Carolina Public Service Co., Inc., as follows:

Northern Pennsylvania Power Co.:		Bonds	Premiums	Retirement Expense	Unamortized Debt Discount and Expense
North Penn Co. bonds..	1926	$368,900	$18,445		$47,058.08
	1927	183,800	9,190		23,441.71
Susquehanna Co. bonds.	1926	600,000	30,000		19,922.11
North Carolina Public Service Co., Inc.:					
Piedmont Co. bonds....	1926 7%	183,700	9,185)	2,112.50	6,017.66
	6%	184,100	5,523)		

The right to deduct the premiums paid to retire the bonds is decided in favor of the petitioner on the authority of our decision on the third issue in Metropolitan Edison Co., supra. The deductibility of the retirement expense of $2,112.50 and unamortized debt discount and expense of $6,017.66 incurred in the conversion of 7% bonds into 6% bonds is also decided in favor of the petitioner on the authority of Coast Counties Gas & Electric Co., supra, and our decision on the first issue in Metropolitan Edison Co., supra. [fol. 170] There remains the question of whether a right exists to deduct the unamortized debt discount and expense involved in the bonds assumed by the Northern Pennsylvania Power Co. The issue turns upon the true nature of the transactions.

The transfers were made under the provisions of Section 23 of the General Corporation Act of April 29, 1874, as amended on April 17, 1876, and are classified by the petitioner as the short form of merger under the laws of Pennsylvania. In the transaction with the North Penn Power Co. sufficient cash passed to retire the preferred stock of the transferor, and common stock of the transferee was exchanged for like stock of the transferor. In the deal with the Susquehanna County Light & Power Co. the transferee exchanged its preferred and common stock for the outstanding stock (common only) of the transferor. The transactions were referred to as sales in the resolutions adopted by the boards of directors of the corporations involved and the applications filed with the Public Service Commission of Pennsylvania under the Act, and they were approved by the Public Service Commission as sales.

Facts in all material respects the same, and the identical statutes of Pennsylvania, were involved in the first point in issue V of the Metropolitan Edison Co. case and we hold that the transactions were, in effect, sales, not statutory mergers. On the authority of that decision the respondent is sustained on this point.

Decision will be entered under Rule 50.

Enter:

——.

Entered June 3, 1937.

[fol. 171] BEFORE UNITED STATES BOARD OF TAX APPEALS, WASHINGTON

Docket No. 52,639

GENERAL GAS & ELECTRIC CORPORATION, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DECISION

Pursuant to the Memorandum Opinion of the Board entered on June 3, 1937, the respondent herein having on August 13, 1937, filed a motion together with a proposed recomputation and the petitioner having on August 20, 1937, acquiesced therein, now, therefore, it is

Ordered and Decreed: That there is a deficiency in income tax for the year 1926 in the amount of $24.21.

Enter.

Entered Aug. 24, 1937.

(S.) Bolon B. Turner, Member.

[fol. 172] IN UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT

[Title omitted]

PETITION FOR REVIEW—Filed November 20, 1937

To the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit:

Now comes the appellant (hereinafter referred to as petitioner), the General Gas and Electric Corporation, a corporation organized and existing under the laws of the State of Delaware, by its undersigned attorneys and respectfully shows:

I. Jurisdiction for Review

This is a proceeding for review by the United States Circuit Court of Appeals for the Second Circuit of the decision of the United States Board of Tax Appeals entered August 24, 1937, Docket No. 52,639, determining a deficiency in income tax of the petitioner for the year 1926.

[fol. 173] The petitioner is a corporation duly organized and existing under the laws of Delaware, with its principal office and place of business in Wilmington, Delaware.

The respondent on review (hereinafter sometimes referred to as the Commissioner) is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States of America.

The return of the tax in respect of which the asserted liability arises was filed with the United States Collector of Internal Revenue for the Second District of New York, whose office is located within the Judicial Circuit of the United States Circuit Court of Appeals for the Second Circuit.

Review of the said decision of the Board of Tax Appeals is sought by the petitioner in the United States Circuit Court of Appeals for the Second Circuit.

II. The Nature of the Controversy

The respondent determined against the petitioner for the taxable periods under review deficiencies in income tax for the calendar year 1926 in the amount of $90,169.05 and for the calendar year 1927 in the amount of $277,903.82 and duly sent to petitioner notice of said deficiencies. Thereafter, petitioner duly filed its petition for the redetermination of the said asserted deficiencies with the United States Board of Tax Appeals (hereinafter referred to as the "Board"). The respondent duly filed his answer to said petition and trial was had. On June 3, 1927, the Board [fol. 174] promulgated its report and opinion, and on August 24, 1937, entered its order redetermining the deficiencies, and deciding that there was a deficiency in the amount of $24.21 for 1926 and a deficiency of $3,164.80 for 1927.

III. The Matter in Controversy

The matter for decision in this controversy is whether the petitioner is entitled to deduct in a consolidated return duly filed with the Northern Pennsylvania Power Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and other corporations, the unamortized debt discount and expense remaining after the retirement by the Northern Pennsylvania Power Company of the bonds of the North Penn Power Company and the

Susquehanna County Light and Power Company. By agreement pursuant to law, the petitioner and each of the affiliated corporations agreed that the entire tax liability of the affiliated group of corporations is to be assessed against and paid by petitioner, the General Gas and Electric Corporation.

The petitioner maintains that in the consolidated returns it was entitled to the deduction with respect to said unamortized discount and expense. The respondent takes the position that the Northern Pennsylvania Power Company, a wholly owned subsidiary of the petitioner acquired the bonds of North Penn Power Company and Susquehanna County Light and Power Company by purchase and is not entitled to deduct such bond discount and expenses.

[fol. 175] In support of this petition, it is the petitioner's position that the Northern Pennsylvania Power Company acquired the bonds through merger and assumed the obligations therefor by virtue of the operation of law pursuant to Section 23 of the General Corporation Act of Pennsylvania of April 29, 1874, as amended April 17, 1876, under what is herein designated as a short form merger.

The Board of Tax Appeals held that the bonds came into the possession and ownership of the Northern Pennsylvania Power Company by virtue of purchase, the Board apparently assuming that if they had been acquired as the result of statutory merger the petitioner would be entitled to the deductions claimed.

The North Penn Power Company in 1923 issued and sold its First Mortgage 30-Year 6% Sinking Fund Gold Bonds due February 1, 1953, at a discount and also incurred expenses of issue and sale of the bonds. In 1926, the Northern Pennsylvania Power Company, an affiliated subsidiary of the petitioner, acquired all of the assets, property and franchises and assumed all of the liabilities of the North Penn Power Company, including its liability on these bonds which constituted a prior lien on the assets taken over, pursuant to and by virtue of the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876, P. L. 30 of the laws of the Commonwealth of Pennsylvania, with the sanction and approval of the Public Service Commission.

In 1926 the Northern Pennsylvania Power Company retired $368,900 principal amount of said bonds and in 1927 $183,800, principal amount thereof.

[fol. 176] The unamortized debt discount and expense with respect to the bonds retired in 1926 was $47,058.08 and with respect to those retired in 1927 the unamortized debt discount and expense was $23,441.71. Those amounts petitioner claims should be allowed as a deduction to the Northern Pennsylvania Power Company and allowed as a deduction in the consolidated return.

In 1926 the Northern Pennsylvania Power Company also acquired under, pursuant to and by virtue of the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876, P. L. 30 of the laws of the Commonwealth of Pennsylvania, with the approval and sanction of the Public Service Commission all the assets and assumed all the liabilities of the Susquehanna County Light and Power Company including the liability of the first mortgage bonds issued by the latter company which constituted a prior lien upon the assets so transferred. The Susquehanna County Light and Power Company was organized under the laws of Pennsylvania in 1913 as a public utility. On and after that date the said company issued and sold $600,000 of its first mortgage 6% gold bonds due December 15, 1943, incurring debt discount and expense incident to such issue and sale. In 1926 the Northern Pennsylvania Power Company redeemed the entire issue of the said bonds and retired the same. At the date of redemption there remained $19,922.11 unamortized debt discount and expense with respect to the issuance and sale of the bonds of the Susquehanna County Light and Power Company. Petitioner herein claims a right to deduct in the consolidated return from the gross income of the [fol. 177] Northern Pennsylvania Power Company for 1926 the said unamortized debt discount and expense.

Petitioner's contention is that under the law of Pennsylvania the assets of the North Penn Power Company and Susquehanna County Light and Power Company were acquired, and their liabilities assumed by operation of law, as a result of a merger under the aforementioned statute which is commonly known as the short form merger under the laws of Pennsylvania.

IV. Findings of the Board

All of the facts in the case either being stipulated or admitted in the answer or shown in the exhibits duly filed and attached to the stipulation, the Board made no independent

findings of fact, but adopted the facts there shown. The Board, however, reached the ultimate conclusion that the assets of the North Penn Power Company and the Susquehanna County Light and Power Company were acquired by the Northern Pennsylvania Power Company through purchase and sale and not as the result of a merger under the laws of Pennsylvania. Based upon this ultimate finding the Board decided that the Northern Pennsylvania Power Company was not entitled to the deduction with respect to the unamortized debt discount and expense upon the retirement of the assumed bonds.

V. Assignment of Error

The petitioner says that, in the decision and order of the Board redetermining the said deficiencies, manifest error [fol. 178] occurred and intervened to the prejudice of the petitioner and the petitioner assigns the following errors upon which it relies to reverse the said decision and order so rendered and entered by the Board, each and every assignment of error being severally and distributively applicable to the deficiency determined, decided and adjudicated against petitioner for the taxable years 1926 and 1927, viz.:

(1) The Board erred in failing to decide as a matter of law that the assets of the Susquehanna County Light and Power Company and the North Penn Power Company were acquired by the Northern Pennsylvania Power Company as a result of merger under the laws of Pennsylvania.

(2) The Board erred in holding that the petitioner was not entitled to the deduction claimed with respect to the unamortized debt discount and expense with respect to bonds of the North Penn Power Company and the Susquehanna County Light and Power Company assumed by it.

(3) The Board erred in determining that there were any deficiencies due from the petitioner for the taxable periods involved.

(4) The Board erred in not determining that there were overpayments of taxes for the periods involved.

Wherefore, the petitioner prays that the decision and order of the United States Board of Tax Appeals be reversed by the United States Circuit Court of Appeals for

the Second Circuit; that a transcript of the record be prepared in accordance with law and the rules of the said Circuit Court of Appeals be submitted to the Clerk of the said [fol. 179] Court for filing and that appropriate action be taken to the end that the decision complained of be reviewed and the errors complained of be corrected and the said decision be reversed by said court.

Respectfully submitted, Charles M. Trammell, Bradford S. Magill, Francis J. Sweeney, Attorneys for Petitioner.

Duly sworn to by Charles M. Trammell. Jurat omitted in printing.

[fol. 180] In United States Circuit Court of Appeals for the Second Circuit

[Title omitted]

Notice of Filing Petition for Review—Filed November 20, 1937

To the Chief Counsel, Bureau of Internal Revenue, United States Treasury Department:

You are hereby notified that on the 20th day of November, 1937, appellant, General Gas & Electric Corporation, did file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Second Circuit, of the decision of the Board of Tax Appeals heretofore rendered in the above entitled case. A copy of the petition for review and assignments of error, as filed, is attached hereto and served upon you.

Dated this 20th day of November, 1937.

C. M. Trammell, Attorney for Appellant.

[fol. 181] Copy of the foregoing notice, together with copy of the petition for review has been received this 20th day of November, 1937, and service thereof is hereby accepted.

J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue.

In United States Circuit Court of Appeals for the Second Circuit

[Title omitted]

Praecipe for Record—Filed November 20, 1937

To the Clerk of the United States Board of Tax Appeals:

You will please prepare within sixty (60) days from the date of the filing of the petition for review in the above-[fol. 182] entitled proceeding, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Second Circuit copies duly certified as correct, of the following documents:

1. Docket entries of proceedings before the Board of Tax Appeals.
2. Pleadings before the Board, including copy of notice of deficiency attached to petition.
3. Stipulation of facts filed with the Board of Tax Appeals, together with exhibits attached thereto and made a part thereof.
4. Opinion and decision of the Board.
5. Petition for review and assignments of error, together with proof of service of notice of filing petition for review and assignments of error.
6. This praecipe, together with proof of service thereof.

C. M. Trammell, Attorney for Petitioner.

Service of a copy of the within praecipe is hereby admitted this — day of November, 1937.

J. P. Wenchel, Attorney for Respondent on Review

[fol. 183] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 184] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1937

Argued May 12, 1938. Decided July 18, 1938

Nos. 221, 222

GENERAL GAS & ELECTRIC CORPORATION, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from Board of Tax Appeals

Before Manton, Swan, and Chase, Circuit Judges

Petitions by General Gas & Electric Corporation to review orders of the Board of Tax Appeals determining deficiencies in income taxes for the years 1926 and 1927.

Affirmed.

William H. S. Wells, of Philadelphia, Pa., Francis J. Sweeney and C. M. Trammell, both of Washington, D. C., and Maurice Bower Saul of Philadelphia, Pa. (Saul, Ewing, Remick & Saul, of Philadelphia, Pa., of counsel), for petitioner.

James W. Morris, Asst. Atty. Gen. (Sewall Key and Lee A. Jackson, Sp. Assts. to Atty. Gen., of counsel), for respondent.

SWAN, Circuit Judge:

Two proceedings, one involving income taxes for the year 1926, the other for 1927, and presenting a common question of law, were consolidated for hearing before the Board. The petitions for review have been similarly consolidated before this court. The petitioner, General Gas & Electric Corporation, has agreed to pay the taxes — its affiliate, Northern Pennsylvania Power Company. The issue in controversy is as to the latter's taxes for the years 1926 and 1927, and this turns on whether it is entitled to deduct the unamortized bond discount and expense of two corporations whose assets and liabilities were taken over by it and whose bonds it retired before maturity during the

years in question. The commissioner disallowed the deductions, and the Board sustained his ruling.

There is no dispute in the facts, which were stipulated. In 1923 North Penn Power Company, a Pennsylvania corporation, issued and sold its first mortgage bonds, due February 1, 1953, at a discount and incurred expense in connection with their issue and sale. In 1926 it transferred all its assets, property and franchises to Northern Pennsylvania Power Company, also a corporation of Pennsylvania, and that company assumed all the liabilities of the transferor, including liability on the aforesaid bonds which constituted a prior lien on the assets transferred. As consideration for the transfer, the transferee, in addition to assuming the transferor's liabilities, gave cash for retirement of the transferor's preferred stock, and shares of the transferee's common stock, which were exchanged for the common stock of the transferor. The transfer was made under section 23 of the Pennsylvania General Corporation Act of 1874, as amended by section 5 of the Act of April 17, 1876, 15 P. S. Pa. § 595, and it had the sanction and approval of the Public Service Commission of Pennsylvania. At the date of the transfer there were outstanding first mortgage bonds of the transferor in the principal amount of $552,700. In 1926 the transferee retired $368,900 of these bonds, and in 1927 retired the remaining $183,800 thereof. By transactions similar in all material respects Northern Pennsylvania Power Company likewise acquired the assets and assumed the liabilities of another Pennsylvania corporation, Susquehanna County Light & Power Company, which [fol. 185] had outstanding an issue of first mortgage bonds that the transferee retired in 1926. The funds for the retirement of the North Penn bonds and the Susquehanna bonds were obtained from the proceeds of the sale of $1,950,000 of First and Refunding Bonds, Series A, due June 1, 1956, of Northern Pennsylvania Power Company. The unamortized bond discount and expense incurred respectively by North Penn Power Company and Susquehanna County Light & Power Company in connection with the issuance and sale of their bonds were transferred as a deferred charge asset on the books of Northern Pennsylvania Power Company. Such discount and expense in respect to the bonds retired in 1926 and 1927, respectively, were claimed as deductions in the consolidated income tax

returns filed by the petitioner and its affiliates for those years.

It is conceded that unamortized discount and expenses incurred in connection with the issue and sale of bonds are deductions available to the issuing corporation when it pays them off prior to maturity. See Helvering v. Union Pacific R. Co., 293 U. S. 282, 55 S. Ct. 165, 79 L. Ed. 363; Great Western Power Co. v. Commissioner, 297 U. S. 543, 56 S. Ct. 576, 80 L. Ed. 853. It is also not disputed that such items are allowable deductions to a successor corporation which through merger or consolidation has carried forward the corporate identity of the issuing corporation and has succeeded by operation of law to its rights and liabilities. American Gas & Elec. Co. v. Commissioner, 2 Cir., 85 F. 2d 527; New York Central R. Co. v. Commissioner, 2 Cir., 79 F. 2d. 247, certiorari denied 296 U. S. 653, 56 S. Ct. 370, 80 L. Ed. 465; Western Maryland Ry. Co. v. Commissioner, 4 Cir., 33 F. 2d 695. When, however, the successor corporation acquires the assets of the issuing corporation by purchase, rather than by a consolidation or merger, such deductions are not available. American Gas & Elec. Co. v. Commissioner, 2 Cir., 85 F. 2d 527; American Gas & Elec. Co. v. United States, 17 F. Supp. 151, Ct. Cl.; Turner-Farber-Love Co. v. Helvering, 62 App. D. C. 369, 68 F. 2d 416. Whether the transactions at bar are to be classed as mergers or as purchases is the issue in controversy.

The solution of the problem must be sought in the law of Pennsylvania. During 1926, when the transfers under consideration were made, the Pennsylvania statutes authorized two forms of transactions by which the assets and franchises of one corporation might be taken over by another. One statute is the Act of May 3, 1909, 15 P. S. Pa. § 421 et seq., sometimes referred to as the "long form merger"; the other is section 23 of the Act of April 29, 1874, as amended by section 5 of the Act of April 17, 1876, which is sometimes called the "short form merger." See York Haven Water & Power Co. v. Public Service Comm., 287 Pa. 241, 246, 134 A. 419. The transfers by which the taxpayer acquired the assets of its transferors and assumed their liabilities were made under the Act of 1874 as amended 15 P. S. Pa. § 595. This provides, so far as material:

"* * * and it shall be lawful for any corporation * * * to sell, assign, dispose of and convey to any cor-

poration created under or accepting the provisions of this act, its franchises, and all its property, real, personal and mixed, and thereafter such corporation shall cease to exist, and the said property and franchises not inconsistent with this act, shall thereafter be vested in the corporation so purchasing as aforesaid: * * *"

It will be observed that the statute speaks in terms of a sale rather than of a merger. It is true that it is provided that the selling corporation "shall cease to exist"; but this has been construed to refer primarily to a cessation of carrying on the business for which the corporation was created. See Merwine v. Mt. Pocono Light & Imp. Co., 304 Pa. 517, 521, 156 A. 150. It will also be observed that nothing is said as to the liability of the transferee for the debts of the transferor. In the case at bar assumption of liability was accomplished by contract; in the absence of a contractual assumption of debts it would seem that creditors of the transferor could hold the transferee liable only on principles of fraudulent conveyance and to the extent of the value of the assets received. See Merwine v. Mt. Pocono Light & Imp. Co., supra, at page 525, 156 A. 150. In several cases transfers made pursuant to this act have been referred to as purchases and sales. See Greensburg Borough v. Westmoreland Water Co., 240 Pa. 481, 485, 87 A. [fol. 186] 995; Koehler v. St. Mary's Brewing Co., 228 Pa. 648, 653, 77 A. 1016, 139 Am. St. Rep. 1024; Carr v. Rochester Tumbler Co., 207 Pa. 392, 395, 56 A. 945. In other cases, the language of the opinions seems to indicate that a transfer under the 1874 Act is regarded as effecting a merger. Pennsylvania Utilities Co. v. Public Service Comm., 69 Pa. Super. 612, 615; York Haven Water & Power Co. v. Public Service Comm., 287 Pa. 241, 246, 134 A. 419. Such characterizations are not conclusive of the present issue. In American Gas & Elec. Co. v. Commissioner, 2 Cir., 85 F. 2d 527, this court stated as an essential of such a merger as would entitle the successor corporation to claim deductions of the unamortized bond discount and expense of the merged corporation, that the successor must by operation of law become responsible for the liabilities of the merged corporation. A provision imposing such liability is certainly customary in technical merger statutes; such liability is expressly provided in the "long form merger" Act of

1909, as it is also in the Act of May 5, 1933, 15 P. S. Pa. § 2851—801 et seq. The absence of such a provision in the Act of 1874, and the construction placed upon that statute in Merwine v. Mt. Pocono Light & Imp. Co., 304 Pa. 517, 156 A. 150, seem to us fatal to the taxpayer's contentions. In that case the plaintiff, a creditor of the selling corporation, moved to substitute the purchasing corporation as a party defendant in an action pending against the seller. The denial of that motion, affirmed by the Supreme Court, shows that under the Act of 1874, the purchasing corporation does not succeed, simply by operation of law, to the liabilities of the seller. Accordingly, we think the case at bar is governed by our decision in American Gas & Elec. Co. v. Commissioner, supra.

Order affirmed.

[fol. 192] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,
against
COMMISSIONER OF INTERNAL REVENUE, Respondent

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,
against
COMMISSIONER OF INTERNAL REVENUE, Respondent

Before Manton, Swan and Chase, Circuit Judges

Gerald J. Dean, William H. S. Wells, Francis J. Sweeney, C. M. Trammell, Maurice Bower Saul, Attorneys for Petitioner. Saul Ewing, Remick & Saul, of Counsel.

Per CURIAM:

Petitions for rehearing denied.

M. T. M., T. W. S., H. B. C., Circuit Judges.

Filed September 1, 1938.

[fol. 193] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 1st day of September, one thousand nine hundred and thirty-eight.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Harrie B. Chase, Circuit Judges.

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE, Respondent

(And Another Case)

A petition for a rehearing having been filed herein by counsel for the petitioner;

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

Wm. Parkin, Clerk.

[fol. 194] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. General Gas and Electric Corpn. vs. Commissioner of Internal Revenue. Order. United States Circuit Court of Appeals, Second Circuit. Filed Sep. 1, 1938. William Parkin, Clerk.

[fol. 195] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 1st day of September, one thousand nine hundred and thirty-eight.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Harrie B. Chase, Circuit Judges.

No. 221

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is affirmed.

It is further ordered that a mandate issue to the said Board in accordance with this decree.

Wm. Parkin, Clerk, by D. E. Roberts, Deputy Clerk.

[fol. 196] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. General Gas & Electric Corpn. vs. Commissioner of Internal Revenue. (No. 221.) Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Sep. 1, 1938. William Parkin, Clerk.

[fol. 197] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 196, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of General Gas & Electric Corporation, Petitioner, against Commissioner of Internal Revenue, Respondent, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this thirtieth day of November, in the year of our Lord one thousand nine hundred and thirty-eight, and of the Independence of the said United States the one hundred and sixty-third.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 198] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 3, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following the hearing of Nos. 486 and 487.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 493

GENERAL GAS AND ELECTRIC CORPORATION,
PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 1, 1938.

CERTIORARI GRANTED JANUARY 3, 1939.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1938

No. 493

GENERAL GAS AND ELECTRIC CORPORATION, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 23, 1939.

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[fol. 1]

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 59,469

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DOCKET ENTRIES

Appearances:

For Taxpayer: Francis J. Sweeney, Esq.
For Comm'r: Chester Gwinn, Esq.

Transferred to Mr. Disney June 30, 1936

1931.

July 30. Petition received and filed. Taxpayer notified. (Fee paid.)

" 30. Copy of petition served on General Counsel.

Sept. 26. Answer filed by General Counsel.

Oct. 5. Copy of answer served on taxpayer. General Calendar.

1934.

Dec. 8. Hearing set January 28, 1935.

1935.

Jan. 3. Stipulation to consolidate with docket 59,470 and of facts filed.

" 28. Hearing had before Mr. Seawell on merits. On motion of parties dockets 59,470 consolidated with dockets 59,469, 52,639, 52,680 and 49,079. Submitted on stipulation of facts heretofore [fol. 2] filed. Petitioner's brief due in 60 days (March 29, 1935). Respondent's brief due 30 days thereafter. Petitioner's brief due in 15 days thereafter.

Feb. 1. Transcript of hearing of January 28, 1935 filed.

Mar. 29. Brief filed by taxpayer. March 29, 1935 copy served.

Apr. 24. Brief filed by General Counsel.

May 9. Reply brief filed by taxpayer. May 10, 1935 copy served.

Docket Entries—Continued

1937.

June 3. Memorandum opinion rendered, Richard L. Disney, Division 4. Decision will be entered under Rule 50.

Aug. 13. Motion for order of redetermination under Rule 50 filed by General Counsel.

" 16. Hearing set September 8, 1937 on settlement.

" 20. Consent to settlement filed by taxpayer.

" 24. Decision entered, Bolon B. Turner, Division 8.

Nov. 20. Petition for review by United States Circuit Court of Appeals (Second) with assignments of error filed by taxpayer.

" 20. Proof of service filed by taxpayer.

" 20. Præcipe with proof of service thereon filed.

[fol. 3] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 59,469

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

PETITION—Filed July 30, 1931

General Gas & Electric Corporation hereby petitions for a redetermination of an asserted deficiency and alleges as follows:

I. The Commissioner of Internal Revenue, the respondent herein, by letter dated June 9, 1931, and bearing the bureau reference or symbols IT:AR:A-8-JES notified your petitioner by registered mail, of a deficiency in income taxes with respect to the income tax imposed by the Revenue Act of 1926.

II. Your petitioner was at all times hereinafter mentioned, a corporation duly organized and existing under the laws of the State of Delaware and was engaged in the business of holding investments in and controlling the operations of public utilities and related trades or businesses.

III. Upon information and belief the notice of deficiency, a copy of which is attached hereto, made a part hereof as

[fol. 4] though here set forth in full and marked Exhibit "A," was mailed to your petitioner on June 9, 1931.

IV. The taxes in controversy are income taxes for the fiscal period beginning January 1, 1927 and ending December 31, 1927, in the amount of $463,957.88.

V. The respondent's determination of income taxes set forth in said deficiency letter is based on the following errors:

A. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by failing to consolidate the taxable net incomes of your petitioner and its affiliated taxpayer, Binghamton Light, Heat & Power Company for the period January 1, 1927 to December 31, 1927.

B. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by failing to consolidate the accounts of your petitioner with the accounts of the taxpayers engaged in related trades or businesses, owned or controlled directly or indirectly by the same interests, as more fully appears from Exhibit "B" attached hereto and made a part hereof as though here set forth in full.

C. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by adding to or failing to deduct from the taxable net incomes of its affiliated taxpayers the following items:

[fol. 5]

Item	Name of Affiliated Taxpayer	Description of Item	
1	Reading Transit Company	Taxes	$13,446.75
2	Reading Transit Company	Rentals	4,204.63
3	Reading Transit Company	Depreciation	100,764.72
4	Reading Transit Company	Additions to leased property	11,766.95
5	Oley Valley Railway Company	Depreciation	8,713.01
6	Oley Valley Railway Company	Taxes	764.48
7	Hamburg Gas & Electric Company	Bad Debts	557.52
8	Hamburg Gas & Electric Company	Depreciation	9,444.83
9	Hamburg Gas & Electric Company	Taxes	2,137.00
10	Topton Electric Light & Pr. Co.	Bad Debts	50.71
11	Topton Electric Light & Pr. Co.	Taxes	527.78
12	Weisenberg Township Elec. Lt. & Power Company	Bad Debts	112.66
13	Weisenberg Township Elec. Lt. & Power Company	Taxes	71.84
14	Ortanna Electric Lt. & Pr. Company	Bad Debts	152.28
15	Ortanna Electric Lt. & Pr. Company	Depreciation	3,220.42

Item	Name of Affiliated Taxpayer	Description of Item	
16	Birdsboro Electric Company	Bad Debts	147.00
17	Birdsboro Electric Company	Taxes	748.24
18	French Creek Electric Company	Bad Debts	24.00
19	French Creek Electric Company	Depreciation	3[illegible]1.54
20	Bernville Light, Heat & Power Co.	Bad Debts	11.75
21	Bernville Light, Heat & Power Co.	Taxes	103.98
22	Bernville Light, Heat & Power Co.	Depreciation	1,373.17
23	Berks-Lehigh Electric Company	Bad Debts	86.83
24	Berks-Lehigh Electric Company	Taxes	359.84
25	Berks-Lehigh Electric Company	Depreciation	1,801.43
26	Blue Mountain Electric Company	Bad Debts	102.95
27	Blue Mountain Electric Company	Taxes	3,165.70
28	Blue Mountain Electric Company	Depreciation	8,975.20
29	Niantic Electric Company	Taxes	44.45
30	Niantic Electric Company	Depreciation	743.50
31	New Jersey Power & Light Co.	Bad Debts	4,500.00
32	New Jersey Power & Light Co.	Injuries and Damages	339.22

[fol. 6]

33	New Jersey Power & Light Co.	Taxes	27,683.53
34	New Jersey Power & Light Co.	Depreciation	309,937.26
35	New Jersey Power & Light Co.	Amortization	307,321.71
36	Northern Pennsylvania Power Company	Loss on sale of Capital Assets	9,597.96
37	Northern Pennsylvania Power Company	Taxes	17,839.69
38	Northern Pennsylvania Power Company	Depreciation	85,628.19
39	Northern Pennsylvania Power Company	Amortization	32,634.71
40	Broad River Power Company	Bad Debts	122,123.47
41	Broad River Power Company	Cost of Changing Equipment	72,019.77
42	Broad River Power Company	Adjustment to Income by the respondent	30,414.19
43	Broad River Power Company	Taxes	18,968.90
44	Broad River Power Company	Amortization	11,436.96
45	Broad River Power Company	Discount on bonds	20,550.00
46	Broad River Power Company	Amortization	12,360.58
47	Broad River Power Company	Depreciation	459,752.83
48	Columbia Railway Gas & Elec. Co.	Obsolescence	274,117.51
49	Columbia Railway Gas & Elec. Co.	Loss on sale of Capital Assets	1,236.78
50	North Carolina Public Service Co.	Discount on bonds	65.24
51	North Carolina Public Service Co.	Loss on securities	1,002.00
52	North Carolina Public Service Co.	Depreciation	277,196.86
53	North Carolina Public Service Co.	Loss on sale of Capital Assets	21,868.10
54	North Carolina Public Service Co.	Amortization	4,451.09
55	Binghamton Light, Heat & Pr. Co.	Taxes	20,369.75
56	Binghamton Light, Heat & Pr. Co.	Depreciation	213,166.03
57	Florida Public Service Company	Net Loss	58,952.90
58	Lexington Water Power Company	Net Loss	57,061.50
59	South Carolina Gas & Electric Company	Net Loss 1925	441,354.31
60	South Carolina Gas & Electric Company	Net Loss 1926	423,898.48
61	South Carolina Gas & Electric Company	Net Loss 1927	331,176.19

[fol. 7] D. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by adding to or failing to deduct therefrom as follows:

1. Profit on sale of securities of affiliated companies	$572,486.68
2. Taxes	5,566.00
3. Profit on sale of subsidiary companies' bonds	16,116.67

E. That the respondent erroneously and illegally determined, computed, allocated, charged, and/or credited the taxes paid by or determined against and/or assessed against your petitioner and/or its affiliated taxpayers and/or taxpayers engaged in related trades or businesses.

VI. Facts upon which your petitioner relies as sustaining the aforesaid assignments of error are as follows:

A. That your petitioner was affiliated with the Binghamton Light, Heat & Power Company for the period beginning January 1, 1927, and ending December 31, 1927.

1. Your petitioner and/or its affiliated taxpayers owned at least 95% of the stock, within the meaning and contemplation of the law, of the Binghamton Light, Heat & Power Company for the period beginning January 1, 1927, and ending December 31, 1927.

2. That your petitioner and the Binghamton Light, Heat & Power Company filed a consolidated income tax return [fol. 8] for the calendar year 1927.

B. That your petitioner and the taxpayers, enumerated in Exhibit "B" attached hereto and made a part hereof as though here set forth in full, were owned or controlled, directly or indirectly by the same interests.

1. That your petitioner and the taxpayers enumerated in Exhibit "B" were at all times herein mentioned engaged in a related trade or business i. e., ownership and operation of public utilities.

2. That your petitioner and the Binghamton Light, Heat & Power Company filed a consolidated return for the calendar year 1927.

3. That the accounts of your petitioner and of said taxpayers enumerated in Exhibit "B" are so related that it is necessary in order to make an accurate distribution or opportionment of gains, profits, income, deductions or

capital between or among them, to consolidate their accounts.

C. Affiliated taxpayers—Facts as to erroneous and illegal increases in taxable net income of affiliated taxpayers by the respondent:

1. Reading Transit Company—said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $69,418.46 of which only $55,971.71 was allowed by [fol. 9] the respondent as a deduction in determining taxable net income.

2. Reading Transit Company—That the respondent erroneously and illegally increased taxable net income by failing to allow rent in the amount of $4,204.63 paid by the said affiliated company during the calendar year 1927.

3. Reading Transit Company—That the depreciable property of said taxpayer for the calendar year 1927 was a sum certain sufficient to constitute the amount of $100,764.72 as a fair and reasonable additional allowance for depreciation.

4. Reading Transit Company—That during the calendar year 1927 said affiliated taxpayer made additions and betterments to leased properties amounting to $11,766.95 which the respondent failed to allow as a deduction in determining taxable net income.

5. Oley Valley Railway Company—That the depreciable property of said taxpayer for the calendar year 1927 was a sum certain sufficient to constitute the amount of $8,713.01 as a fair and reasonable additional allowance for depreciation.

6. Oley Valley Railway Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes [fol. 10] properly deductible in determining taxable net income amounting to $1,673.98 of which only $909.50 was allowed by the respondent as a deduction in determining taxable net income.

7. Hamburg Gas & Electric Company—The respondent erroneously and illegally increased taxable net income of said affiliated taxpayer in the amount of $557.52 by placing its deductions for bad debts upon an actual bad debt basis.

Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

8. Hamburg Gas & Electric Company—That the depreciable property of said taxpayer for the calendar year 1927 was a sum certain, sufficient to constitute the amount of $9,444.83 as a fair and reasonable additional allowance for depreciation.

9. Hamburg Gas & Electric Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $2,931.22 of which only $794.22 was allowed by the respondent in determining taxable net income.

10. Topton Electric Light & Pr. Company—The respondent erroneously and illegally increased taxable net income of said affiliated taxpayer in the amount of $50.71 by placing its deductions for bad debts upon an actual bad debt [fol. 11] basis. Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

11. Topton Electric Light & Pr. Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $850.40 of which only $322.62 was allowed by the respondent as a deduction in determining taxable net income.

12. Weisenberg Township Electric Light & Pr. Company—The respondent erroneously and illegally increased taxable net income of said affiliated taxpayer in the amount of $112.66 by placing its deductions for bad debts upon an actual bad debt basis. Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

13. Weisenberg Township Electric Light & Pr. Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $98.16 of which only $26.32 was allowed by the respondent as a deduction in determining taxable net income.

14. Ortanna Electric Lt. & Pr. Company—The respondent erroneously and illegally increased taxable net income of [fol. 12] said affiliated taxpayer in the amount of $152.28

by placing its deductions for bad debts upon an actual bad debt basis. Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

15. Ortanna Electric Lt. & Pr. Company—That the depreciable property of said taxpayer for the calendar year 1927 was a sum certain, sufficient to constitute the amount of $3,220.42 as a fair and reasonable allowance for depreciation.

16. Birdsboro Electric Company—The respondent erroneously and illegally increased taxable net income of said affiliated taxpayer in the amount of $147.00 by placing its deductions for bad debts upon an actual bad debt basis. Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

17. Birdsboro Electric Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $508.80 of which only $239.44 was allowed by the respondent as a deduction in determining taxable net income.

18. French Creek Electric Company—The respondent erroneously and illegally increased taxable net income of said [fol. 13] affiliated taxpayer in the amount of $24.00 by placing its deductions for bad debts upon an actual bad debt basis. Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

19. French Creek Electric Company—That the depreciable property of said taxpayer for the calendar year 1927 was a sum certain, sufficient to constitute the amount of $393.54 as a fair and reasonable allowance for depreciation.

20. Bernville Light, Heat & Pr. Company—The respondent erroneously and illegally increased taxable net income of said affiliated taxpayer in the amount of $11.75 by placing its deductions for bad debts upon an actual bad debt basis. Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

21. Bernville Light, Heat & Pr. Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net in-

come amounting to $198.86 of which only $94.88 was allowed by the respondent as a deduction in determining taxable net income.

22. Bernville Light, Heat & Pr. Company—That the depreciable property of said taxpayer for the calendar year [fol. 14] 1927 was a sum certain, sufficient to constitute the amount of $1,373.17 as a fair and reasonable allowance for depreciation.

23. Berks-Lehigh Electric Company—The respondent erroneously and illegally increased taxable net income of said affiliated taxpayer in the amount of $86.83 by placing its deductions for bad debts upon an actual bad debt basis. Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

24. Berks-Lehigh Electric Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $148.86 of which only $210.98 was allowed by the respondent as a deduction in determining taxable net income.

25. Berks-Lehigh Electric Company—That the depreciable property of said taxpayer for the calendar year 1927 was a sum certain sufficient to constitute the amount of $1,801.43 as a fair and reasonable allowance for depreciation.

26. Blue Mountain Electric Company—The respondent erroneously and illegally increased taxable net income of said affiliated taxpayer in the amount of $102.95 by placing its deductions for bad debts upon an actual bad debt basis. [fol. 15] Upon information and belief said affiliated taxpayer has deducted bad debts in prior years upon the accrual basis.

27. Blue Mountain Electric Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $1,079.80 of which only $2,085.90 was allowed by the respondent as a deduction in determining taxable net income.

28. Blue Mountain Electric Company—That the depreciable property of said taxpayer for the calendar year 1927 was a sum certain sufficient to constitute the amount of

$8,975.20 as a fair and reasonable allowance for depreciation.

29. Niantic Electric Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $55.82 of which only $11.37 was allowed by the respondent as a deduction in determining taxable net income.

30. Niantic Electric Company — That the depreciable property of said taxpayer for the calendar year 1927 was a sum certain, sufficient to constitute the amount of $743.50 as a fair and reasonable allowance for depreciation.

31. New Jersey Power & Light Company—During the [fol. 16] calendar year 1927 said affiliated taxpayer charged operating expenses and credited reserve for uncollectible accounts in the amount of $8,700 of which $4,500 was disallowed by the respondent. A fair and reasonable allowance for bad debts would not be less than $8,700.

32. New Jersey Power & Light Company—During the calendar year 1927 said affiliated taxpayer added to its reserve for Injuries and Damages in the form of miscellaneous credits $339.22. Upon information and belief this amount was not used as a deduction in determining taxable net income on the return as filed.

33. New Jersey Power & Light Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $128,223.11 of which only $100,539.58 was allowed by the respondent as a deduction in determining taxable net income.

34. New Jersey Power & Light Company—That the depreciable property of said affiliated taxpayer for the calendar year 1927 was a sum certain, sufficient to constitute the amount of $309,937.26 as a fair and reasonable additional allowance for depreciation.

35. New Jersey Power & Light Company—That said affiliated taxpayer incurred during the calendar year 1927 in- [fol. 17] terest expense and/or ordinary and necessary expense by reason of amortization and/or premiums amounting to $307,321.71 which the respondent erroneously and illegally failed to allow.

36. Northern Pennsylvania Power Company—That the respondent erroneously and illegally increased taxable net income by disallowing $9,597.96 of a total loss of $37,506.40 incurred during the calendar year 1927 on the sale of miscellaneous capital assets.

37. Northern Pennsylvania Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $10,052.41 of which only $7,787.28 was allowed by the respondent as a deduction in determining taxable net income.

38. Northern Pennsylvania Power Company—That the depreciable property of said affiliated taxpayer for the calendar year 1927 was a sum certain, sufficient to constitute the amount of $85,628.19 as a fair and reasonable additional allowance for depreciation.

39. Northern Pennsylvania Power Company—That said affiliated taxpayer incurred during the calendar year 1927 interest expense and/or ordinary and necessary expense by [fol. 18] reason of amortization and/or premiums amounting to $32,634.71 which the respondent failed to allow.

40. Broad River Power Company—during the calendar year 1927 said affiliated taxpayer incurred a loss through the write-off of bad debts in the amount of $122,123.47 which the respondent failed to allow as a deduction in determining taxable net income.

41. Broad River Power Company—That during the calendar year 1927 said affiliated taxpayer incurred an expense of $72,019.77 properly deductible in determining taxable net income by reason of changing certain of its equipment from 40 to 60 cycle which the respondent failed to allow as a deduction in determining taxable net income.

42. Broad River Power Company—That in adjusting taxable net income the respondent erroneously and illegally duplicated an addition thereto in the amount $30,414.19 representing obsolescence which was also included in his adjustment for loss on sale of capital assets.

43. Broad River Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net in-

come amounting to $244,105.44 of which only $225,136.54 was allowed by the respondent as a deduction in determining taxable net income.

[fol. 19] 44. Broad River Power Company—Said taxpayer incurred during the calendar year 1927 interest expense and/or ordinary and necessary expense by reason of amortization amounting to $11,436.96 which the respondent erroneously and illegally failed to allow.

45. Broad River Power Company—That said affiliated taxpayer did not realize any taxable profit in the purchase of its own bonds at a discount of $20,550.

46. Broad River Power Company—That said affiliated taxpayer incurred during the calendar year 1927 interest expense and/or ordinary and necessary expense by reason of amortization amounting to $12,036.58, which the respondent erroneously and illegally failed to allow.

47. Broad River Power Company—That the depreciable property of said affiliated taxpayer for the calendar year 1927 was a sum certain sufficient to constitute the amount of $459,752.83 as a fair and reasonable additional allowance for depreciation.

48. Columbia Railway, Gas & Elec. Company—That said affiliated taxpayer, by reason of abandonments of its street car lines and equipment, sustained or incurred obsolescence during 1927 amounting to not less than $274,117.51.

49. Columbia Railway, Gas & Electric Company—That during the calendar year 1927 said affiliated taxpayer sold miscellaneous capital assets and sustained a loss of [fol. 20] $1,236.78 on said sale which the respondent failed to allow as a deduction in determining taxable net income.

50. North Carolina Public Service Company—That said affiliated taxpayer did not realize taxable profit in the purchase of its own bonds at a discount of $65.24.

51. North Carolina Public Service Company—That during the calendar year 1927 said affiliated taxpayer determined that its investment of $1,002 in the stock of South Atlantic Export Company was worthless and wrote down the investment to the nominal amount of 2 dollars.

52. North Carolina Public Service Company—That the depreciable property of said taxpayer for the period begin-

ning January 1, and ending August 1, 1927, was a sum certain sufficient to constitute the amount of $277,196.86 as a fair and reasonable allowance for depreciation.

53. North Carolina Public Service Company—That during the period beginning January 1, 1927, and ending August 1, 1927, said affiliated company sold miscellaneous capital assets and incurred a loss of $21,868.10 on said sale which the respondent failed to allow as a deduction in determining taxable net income.

54. North Carolina Public Service Company—Said affiliated taxpayer incurred during the period beginning January 1, and ending August 1, 1927, interest and/or ordinary and necessary expenses in the nature of amortization [fol. 21] amounting to $4,451.09 which the respondent failed to allow as a deduction in determining taxable net income.

55. Binghamton Light, Heat & Pr. Company—Said affiliated taxpayer paid and incurred during the calendar year 1927 taxes properly deductible in determining taxable net income amounting to $99,354.45 of which only $78,984.70 was allowed by the respondent as a deduction in determining taxable net income.

56. Binghamton Light, Heat & Pr. Company—That the depreciable property of said affiliated taxpayer for the calerdar year 1927 was a sum certain, sufficient to constitute the amount of $213,166.03 as a fair and reasonable additional allowance for depreciation.

57. Florida Public Service Company—That said taxpayer sustained a net loss of $58,952.90 during the calendar year 1927 which the respondent failed to allow in computing consolidated taxable net income for 1927.

58. Lexington Water Power Company—That said taxpayer sustained a net loss of $57,061.50 during the calendar year 1927 which the respondent failed to allow in computing the consolidated taxable net income for 1927.

59. South Carolina Gas & Elec. Company—That said taxpayer sustained a net loss of $441,354.31 during the calendar [fol. 22] year 1925 which the respondent failed to allow in computing the consolidated taxable net income for 1927.

60. South Carolina Gas & Elec. Company—That said taxpayer sustained a net loss of $423,889.48 during the calendar

year 1926 which the respondent failed to allow in computing the consolidated taxable net income for 1927.

61. South Carolina Gas & Elec. Company—That said taxpayer sustained a net loss of $331,176.19 during the period beginning January 1, 1927, and ending July 31, 1927, which the respondent failed to allow in computing consolidated taxable net income for the calendar year 1927.

D. Petitioner's income—Facts as to erroneous and illegal increases in taxable net income of your petitioner by respondent:

1. That the respondent erroneously and illegally increased taxable net income by including therein alleged taxable profit, on the sale of an affiliated taxpayer's stock in the amount of $572,486.68.

2. That your petitioner paid and incurred during the calendar year 1927 taxes property deductible in determining taxable net income amounting to $8,869.67 of which only $3,303.67 was allowed by the respondent as a deduction in determining taxable net income.

3. That the respondent erroneously and illegally increased taxable net income by including therein profit on [fol. 23] sale of bonds of an affiliated taxpayer amounting to $16,116.67.

E. That the respondent has erroneously and illegally determined, computed, allocated and assessed the income taxes between your petitioner, its affiliated taxpayers and/or the taxpayers engaged in related trades or businesses, contrary to the agreement between said taxpayers, the law and regulations made and provided.

Wherefore, your petitioner prays that your Honorable Board may hear and determine its petition; that the determination of the respondent contained in said deficiency letter be redetermined, set aside, disallowed and disapproved by your Honorable Board, granting unto your petitioner a reduction and disallowance of said respondent's deficiency and refunding or crediting the income tax overpayments and overassessments as follows:

Fiscal period beginning January 1, 1927, and ending December 31, 1927	Overassessment and Overpayment	$153,155.54

to your petitioner, its affiliated taxpayers and/or its taxpayers engaged in said related trades or businesses, in accordance with the agreement between said taxpayers and the law.

All of which is respectfully submitted.

Francis J. Sweeney, Counsel for Taxpayer, Room 2406—61 Broadway, New York, N. Y.

[fol. 24] *Duly sworn to by J. F. McKenna. Jurat omitted in printing.*

[fol. 25] General Gas & Electric Corporation

Certified Resolutions

Whereas, The United States Treasury Department, by letter dated June 9, 1931, notified this company of an asserted deficiency of $277,903.82 for the period January 1, 1927 to December 31, 1927 in connection with its Federal Income Tax Return; and

Whereas, this company is informed and believes that said deficiency is erroneous and illegal. Now, Therefore, Be It

Resolved, that J. F. McKenna, Vice President, is directed and authorized to cause to be prepared a petition to the United States Board of Tax Appeals for a redetermination and also to execute the verification of said petition and to retain Francis J. Sweeney as counsel.

This is to Certify that the undersigned is Assistant Secretary of General Gas & Electric Corporation, a corporation of the State of Delaware, that the above and foregoing is a true and correct copy of certain resolutions duly and regularly adopted by the Executive Committee of said corporation at a meeting thereof duly convened and held on the 21st day of July, 1931, at which meeting a quorum was present and that said resolutions have not been annulled, revoked or amended in any way whatsoever but are in full force and effect.

[fol. 26] Witness the signature of the undersigned as such officer of the corporation and its corporate seal hereunto affixed this 21st day of July, 1931.

(Signed) C. A. Daugherty, Asst. Secy.

Subscribed and sworn to before me this 22nd day of July, 1931. (Signed) A. P. Ringressy, Notary Public. Kings County Clk's No. 396, Reg. No. 2330. N. Y. County Clk's No. 79, Reg. No. 3R-72. Commission Expires March 30, 1933. (Seal.)

EXHIBIT "A" TO PETITION

NP-2-26.

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Address Reply to Commissioner of Internal Revenue and refer to

Jun. 9, 1931.

General Gas and Electric Corporation, Room 2406-61 Broadway, New York, New York.

SIRS:

You are advised that the determination of your tax liability for the year(s) 1927 discloses a deficiency of $277.-[fol. 27] 903.82 as shown in the statement attached.

In accordance with Section 274 of the Revenue Act of 1926, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, if you do not desire to petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this form will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier; Whereas if this form is not filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully, David Burnet, Commissioner, by J. C. Wilmer, Deputy Commissioner.

Enclosures: Statement. Form 882. Form 870. Schedules 1 to 64, inclusive.

[fol. 28]

IT:AR:A-8.
JES.

STATEMENT

Companies included in the consolidation:

Parent (or Principal Company)	Returns Examined for the Year
General Gas and Electric Corporation, Room 2406, 61 Broadway, New York, New York	1927
Subsidiary Companies	
The General Finance Corporation, Room 2406, 61 Broadway, New York, New York	1927
Reading Transit Company, 412 Washington Street, Reading, Pennsylvania	1927
Oley Valley Railway Company, 412 Washington Street, Reading, Pennsylvania	1927
Oley Valley Quarry Company, 412 Washington Street, Reading, Pennsylvania	1927
Reading Transit Bus Company, 412 Washington Street, Reading, Pennsylvania	1927
Neversink Mountain Railway Company, 412 Washington Street, Reading, Pennsylvania	1927
Reading and Hamburg Railway Company, 412 Washington Street, Reading, Pennsylvania	1927
Womelsdorf and Myerstown Railway Company, 412 Washington Street, Reading, Pennsylvania	1927
Hamburg Gas and Electric Company, 412 Washington Street, Reading, Pennsylvania	1927
Topton Electric Light and Power Company, 412 Washington Street, Reading, Pennsylvania	1927
[fol. 29]	
Weisenberg Township Electric Light and Power Company, 412 Washington Street, Reading, Pennsylvania	1927
Ortanna Electric Light and Power Company, 412 Washington Street, Reading, Pennsylvania	1927
Birdsboro Electric Company, 412 Washington Street, Reading, Pennsylvania	1927
The French Creek Electric Company, 412 Washington Street, Reading, Pennsylvania	1927
Bernville Light Heat and Power Company, 412 Washington Street, Reading, Pennsylvania	1927
Berks-Lehigh Electric Company, 412 Washington Street, Reading, Pennsylvania	1927
Blue Mountain Electric Company, 412 Washington Street, Reading, Pennsylvania	1927
Niantic Electric Light and Power Company, 412 Washington Street, Reading, Pennsylvania	Period July 1, 1927 to October 1, 1927

General Gas and Electric Corporation—Statement—Continued

Parent (or Principal Company)	Returns Examined for the Year
The Jersey Corporation, 30 West Blackwell Street, Dover, New Jersey	1927
New Jersey Power and Light Company, 30 West Blackwell Street, Dover, New Jersey	1927
Northern Pennsylvania Power Company, 207 Main Street, Blossburg, Pennsylvania	1927
The Waverly Electric Light and Power Company, 172 Washington Street, Binghamton, New York	1927
The Nicholson Light, Heat and Power Company, 172 Washington Street, Binghamton, New York	Period January 1, 1927 to November 1, 1927

[fol. 30]

Broad River Power Company, Arcade Building, Columbia, South Carolina	1927
Columbia Railway Gas and Electric Company, Arcade Building, Columbia, South Carolina	1927
Columbia Gas Light Company, Arcade Building, Columbia, South Carolina	1927
North Carolina Public Service Company, 118 North Elm Street, Greensboro, North Carolina	Period January 1, 1927 to August 1, 1927
Salisbury and Spencer Railway Company, 118 North Elm Street, Greensboro, North Carolina	Period January 1, 1927 to August 1, 1927
Greensboro Bus Company, 118 North Elm Street, Greensboro, North Carolina	Period January 1, 1927 to August 1, 1927
Melrose Power and Manufacturing Company, Arcade Building, Columbia, South Carolina	Period January 1, 1927 to February 22, 1927
Blue Ridge Power Company, Arcade Building, Columbia, South Carolina	1927
Manufacturers Power Company, Arcade Building, Columbia, South Carolina	1927
Saluda Manufacturing Company, Arcade Building, Columbia, South Carolina	1927
Central Carolina Power Company, Arcade Building, Columbia, South Carolina	1927
Richland Public Service Company of South Carolina, Arcade Building, Columbia, South Carolina	1927

[fol. 31]

General Gas and Electric Corporation—Statement—Continued

Parent (or Principal Company)	Returns Examined for the Year
Public Service Company of South Carolina, Arcade Building, Columbia, South Carolina	Period January 1, 1927 to July 11, 1927
Saylorsburg Light and Power Company, 160 Ferry Street, Easton, Pennsylvania	Period January 1, 1927 to July 31, 1927
Pen Argyl Gas Company, 2nd and Ferry Streets, Easton, Pennsylvania	Period January 1, 1927 to July 31, 1927
New Jersey Power Corporation, 2nd and Ferry Streets, Easton, Pennsylvania	Period January 1, 1927 to July 5, 1927

[fol. 32] Inasmuch as the provisions of section 240(c) and (4) of the Revenue Act of 1926 have not been complied with the Binghamton Light, Heat and Power Company has been ruled not affiliated with your company for the year 1927.

Tax Liability

General Gas and Electric Corporation

Year	Tax Liability	Tax Assessed	Deficiency
1927	$400,318.90	$122,415.08	$277,903.82

Full details of the adjustments producing the above-stated result are contained in the attached schedules 1 to 64, inclusive, and the revenue agent's report.

The entire tax liability has been allocated to the General Gas and Electric Corporation in accordance with the allocation of tax agreement, signed by each company included in the affiliated group, which is on file in this office.

Due to the fact that the statute of limitations will presently bar any assessment of additional tax against you for the year 1927 the Bureau will be unable to afford you an opportunity under the provisions of article 1211 of Regulations 69 to discuss your case before mailing formal notice of its determination as provided by section 274(a) of the Revenue Act of 1926. It is, therefore, necessary at this time to issue this formal notice of deficiency.

In the determination of your tax liability, stated above, careful consideration has been given the statements set

forth in your protest to the revenue agent's report and the claim, listed below, filed by you and your affiliated companies, which will be made the subject of separate communications from this Bureau:

[fol. 33] General Gas and Electric Corporation

Statement

Name of Company Filing Claim	Kind of Claim	Year or Period	Amount
General Gas and Electric Corporation and affiliated companies	Refund	1927	$140,625.44
General Gas and Electric Corporation	Refund	1927	50,996.04
New Jersey Power and Light Company	Refund	1927	3,032.48
Northern Pennsylvania Power Company	Refund	1927	5,582.27
Ortanna Electric Light and Power Company	Refund	1927	183.79
Topton Electric Light and Power Company	Refund	1927	1,068.06
Weisenberg Township Electric Light and Power Company	Refund	1927	84.37
The French Creek Electric Company	Refund	1927	193.12
Hamburg Gas and Electric Company	Refund	1927	6,148.68
Birdsboro Electric Company	Refund	1927	1,376.74
Bernville Light Heat and Power Company	Refund	1927	475.68
Berks-Lehigh Electric Company	Refund	1927	345.02
Blue Mountain Electric Company	Refund	1927	2,615.63
The Nicholson Light, Heat and Power Company	Refund	January 1 to October 31, 1927	168.47
Saylorsburg Light and Power Company	Refund	January 1 to July 31, 1927	192.83
Niantic Electric Light and Power Company	Refund	July 1 to October 1, 1927	42.19
Broad River Power Company	Refund	1927	1,608.13
Reading Transit Company	Refund	1927	20,371.75
Oley Valley Railway Company	Refund	1927	291.00

A carbon copy of this letter has been mailed to H. C. Hopson and Company, 61 Broadway, New York, New York, in accordance with the authorization contained in a power of attorney, running to them, which is on file in this office.

[fol. 34] General Gas and Electric Corporation

Year Ended December 31, 1927

Schedule 1

Net Income

Net income as disclosed by return	$579,139.03
As corrected	1,136,784.77
Net adjustment	$557,645.74

Unallowable deduction and additional income:		
(a) Profit on sale of securities	$572,486.68	
(b) Interest received on income tax refund	941.24	
Total		$573,427.92
Nontaxable income and additional deductions:		
(c) Legal expenses	$15,782.18	
Total		15,782.18
Net adjustment as above		$557,645.74

Schedule 1-a

Explanation of Items Changed

(a) This item represents profit realized from the sale of 30020 shares common stock of North Carolina Public Service Company to Duke Power Company and the amount, which was included in your income tax return as nontaxable income, is added to taxable income in accordance with the [fol. 35] provisions of section 233 of the Revenue Act of 1926 and article 541, Regulations 69, the amount is computed as follows:

Amount received from sale	$1,104,736.68
Cost	532,250.00
Profit realized	$572,486.68

(b) This item represents interest received during the taxable year on an overpayment of federal income taxes for prior years, and the amount is added to taxable income in accordance with the provisions of section 233 of the Revenue Act of 1926 and article 541, Regulations 69.

Reference: I.T.2210, Cumulative Bulletin IV-2, page 96

General Gas and Electric Corporation

Year Ended December 31, 1927

Schedule 1-a (Continued)

Explanation of Items Changed (Continued)

(c) This item represents legal expenses incurred in connection with the sale of the stock referred to in item (a),

above, which was shown as an unallowable deduction in schedule L of your income tax return for the taxable year, and the amount is allowed as a deduction from gross income in accordance with the provisions of section 234 of the Revenue Act of 1926 and article 561, Regulations 69.

[fol. 36]

Schedule 2

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year		$501,914.23
Correct net income		1,136,784.77
Footing		$1,638,699.00
Nontaxable income and additional deductions:		
Refund of federal income tax	$5.00	
Profit on sale of stock—Metropolitan Edison Company	6,400.00	
Dividends from stock of Domestic Corporations	1,642,861.17	
		1,649,266.17
Total		$3,287,965.17
Unallowable deductions and additional income:		
Federal income taxes	$59,500.00	
Normal 2% income tax on tax free covenant bond interest	11.01	
Capital stock tax of General Gas and Electric Corporation (Maine) for 1924	5,566.00	
Refund of installment payment of Rutland Railway Light and Power Company preferred stock	119.90	
Interest received on federal income tax refunded	941.24	
Dividends paid	1,888,951.03	
		1,955,089.18
Profit and loss surplus disclosed by balance sheet at end of year		$1,332,875.99

[fol. 37] General Gas and Electric Corporation

The General Finance Corporation

Year Ended December 31, 1927

Schedule 3

Net Income

Net income as disclosed by return	($45,281.87)
As corrected	(38,881.87)
Adjustment	$6,400.00

Unallowable deductions and additional income:

(a) Additional profit on sale of 1,800 shares Metropolitan Edison Company $6.00 preferred stock	$6,400.00

Schedule 3-a

Explanation of Items Changed

(a) This item represents additional profit realized in connection with the sale of stock of the Metropolitan Edison Company, resulting from the use of $153,600.00 as the cost of this stock to you whereas the cost of $147,200.00 to the parent company, General Gas and Electric Corporation, from whom the stock was purchased, should have been used. The amount is, therefore, added to taxable income in accordance with the provisions of section 233 of the Revenue Act of 1926 and article 541, Regulations 69.

[fol. 38] Schedule 4

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$70,654.51
Corrected net income	(38,881.87)
Footing	$31,772.64

Nontaxable income and additional deductions:

Dividends received from stock of Domestic Corporations	451.00
Total	$32,223.64

Unallowable deductions and additional income:	
Profit on sale of 1,800 shares stock of Metropolitan Edison Company	6,400.00
Profit and loss surplus disclosed by balance sheet at end of year	$25,823.64

[fol. 39] General Gas and Electric Corporation

Reading Transit Company

Year Ended December 31, 1927

Schedule 5

Net Income

Net income as disclosed by return		$221,118.78
As corrected		280,838.21
Net adjustment		$59,719.43
Unallowable deductions and additional income:		
(a) Amortization of additions and improvements to leased property	$14,066.02	
(b) Excessive loss on sale of property	6,006.79	
(c) Increase in tax liability reserve	12,104.33	
(d) Depreciation overaccrued	27,542.29	
Total adjustment as above		$59,719.43

[fol. 40] Schedule 5-a

Explanation of Items Changed

(a) In the absence of the required information with respect to the terms of the leases under which the expenditures are made the above amount is disallowed as a deduction from gross income in accordance with provisions of sections 214(a) (1) and 234(a) (1) of the Revenue Act of 1926 and articles 110 and 561, Regulations 69.

(b) This item represents an excessive loss in connection with the sale of miscellaneous property, during the taxable year, taken as a deduction from gross income in your income tax return and is disallowed in accordance with the provisions of section 234 of the Revenue Act of 1926 and article 561, Regulations 69, the amount is computed as follows:

Kind of Property	Year Acquired	Cost or March 1, 1913 Value	Depreciation Autos 20% Other 3½%	Sale Price	Profit or Loss
Dodge auto	1922	$1,037.38	$1,037.38	$125.00	$125.00
Miscellaneous cars	March 1, 1913	10,801.26	4,980.55	1,080.27	(4,740.44)
Miscellaneous cars	March 1, 1913	2,125.12	979.92	377.74	(767.46)
Land	1903	1,270.42	-0-	1,000.00	(270.42)
Lines and equipment	March 1, 1913	516.03	237.95	210.49	(67.59)
Lines and equipment	1918	746.98	236.54	170.13	(340.31)
Total		$16,497.19	$7,472.34	$2,963.63	($6,061.22)

[fol. 41] General Gas and Electric Corporation

Reading Transit Company

Year Ended December 31, 1927

Schedule 5-a (Continued)

Explanation of Items Changed (Continued)

(b) Continued) Brought forward	($6,061.22)
Amount deducted in return	12,068.01
Amount disallowed as above	$6,006.79

(c) Inasmuch as the taxes paid by the corporation have been taken and allowed as deductions from gross income in prior years on the paid basis rather than on the accrual basis, this adjustment is found necessary.

(d) This item represents depreciation deducted from gross income in your income tax return for the taxable year in excess of the amount allowable as determined by the Bureau in accordance with the provisions of section

234(a) (7) of the Revenue Act of 1926, and article 164, Regulations 69. The amount is computed as follows:

Plant account at January 1, 1927		$6,848,198.14
Less:		
Additions and improvements to leased property	$1,802,242.91	
Leaseholds, contracts and rights	2,315,864.04	
General	21,544.21	
		4,139,651.16
Adjusted depreciable assets January 1, 1927		$2,708,546.98

[fol. 42] Plant account at December 31, 1927		$6,842,242.68
Less:		
Additions and improvements to leased property	$1,802,242.91	
Leaseholds, contracts and rights	2,315,864.04	
General	21,544.21	
		4,139,651.16
Adjusted depreciable assets at December 31, 1927		$2,702,591.52

Average depreciable assets for the year: ($2,708,546.98 plus $2,702,591.52) / 2	$2,705,569.25

General Gas and Electric Corporation

Reading Transit Company

Year Ended December 31, 1927

Schedule 5-a (Continued)

Explanation of Items Changed (Continued)

(d) (Continued)

Depreciation rate	1½%
Depreciation deducted in return	$68,125.83
Depreciation sustained: ($2,705,569.25 times 1½%)	40,583.54
Amount disallowed as above	$27,542.29

[fol. 43] Schedule 6

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of taxable year		$353,509.44
Corrected net income		280,838.21
Footing		$634,347.65
Nontaxable income and additional deductions:		
Dividends received from stock of domestic corporations	$9,823.00	
Charges to reserve for injuries and damages	69,065.54	
1927 charges applicable to 1928	11,565.76	
Loss on sale of property	6,061.22	
		96,515.52
Total		$730,863.17
Unallowable deductions and additional income:		
Depreciation overaccrued	$27,542.29	
Federal income taxes	43,593.36	
Credit to reserve for injuries and damages	88,606.00	
1927 charges applicable to 1926	2,834.16	
Dividends paid	119,145.00	
Increase in tax liability reserve	12,104.33	
		293,825.14
Profit and loss surplus disclosed by balance sheet at end of year		$437,038.03

[fol. 44] General Gas and Electric Corporation

Oley Valley Railway Company

Year Ended December 31, 1927

Schedule 7

Net Income

Net income as disclosed by return	$2,960.96
As corrected	(2,463.83)
Net adjustment	$5,424.79

Unallowable deductions and additional income:	
(a) Increase in tax liability reserve	**$1,540.72**
Nontaxable income and additional deductions:	
(b) Depreciation underaccrued	**6,965.51**
Net adjustment as above	**$5,424.79**

(a) For explanation of this adjustment see item (c) schedule 5-a, above.

(b) This item represents depreciation, sustained during the taxable year, allowable as a deduction from gross income as determined by the Bureau in accordance with the provisions of section 234(a) (7) of the Revenue Act of 1926, and article 164, Regulations 69. The amount is computed as follows:

[fol. 45] Average depreciable assets for the year	**$464,367.55**
Depreciation rate	**1½%**
Depreciation sustained ($464,367.55 times 1½%)	**$6,965.51**
Amount deducted in return	**None.**
Amount allowed as above	**$6,965.51**

Schedule 8

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	**$9,217.41**
Corrected net income	**(2,463.83)**
Footing	**$6,753.58**

[fol. 46] General Gas and Electric Corporation

Oley Valley Railway Company

Year Ended December 31, 1927

Schedule 8 (Continued)

Reconciliation of Surplus

Brought forward		$6,753.58
Nontaxable income and additional deductions:		
Charges to reserve for injuries and damages	$108.25	
Depreciation underaccrued	6,965.51	
		7,073.76
Total		$13,827.34
Unallowable deductions and additional income:		
Federal income taxes	$1,372.04	
Increase in tax liability reserve	1,540.72	
		2,912.76
Profit and loss surplus disclosed by balance sheet at end of year		$10,914.58

Schedule 9

Oley Valley Quarry Company

Net Income

Net income as disclosed by return	($143.52)
As corrected	No change.

[fol. 47] Schedule 10

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$3,833.51
Income as disclosed by return	(143.52)
Footing	$3,689.99

Schedule 10—Reconciliation of Surplus—Continued

Nontaxable income and additional deductions	None.	
Unallowable deductions and additional income	None.	
		0
Profit and loss surplus disclosed by balance sheet at end of year		$3,689.99

[fol. 48] General Gas and Electric Corporation

Reading Transit Bus Company

Year Ended December 31, 1927

Schedule 11

Net Income

Net income as disclosed by return	(549.38)
As corrected	(1,999.40)
Net adjustment	$1,450.02

Unallowable deductions and additional income:

(a) Increase in tax liability reserve	$76.71

Nontaxable income and additional deductions:

(b) Depreciation underaccrued	1,526.73
Net adjustment as above	$1,450.02

Schedule 11-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (c), schedule 5-a, above.

(b) For explanation of this adjustment see item (b), schedule 7-a, above. The amount is computed as follows:

[fol. 49] Depreciable assets at January 1, 1927	None.
Depreciable assets at December 31, 1927	$41,794.10

Average depreciable assets for the year:	
($41,794.10 divided by 2)	$20,897.05
Depreciation rate (busses)	20%
Depreciation deducted in return	$2,652.68
Depreciation sustained:	
($20,897.05 times 20%)	4,179.41
Amount allowed as above	$1,526.73

General Gas and Electric Corporation

Reading Transit Bus Company

Year Ended December 31, 1927

Schedule 12

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year		$5,638.31
Corrected net income		(1,999.40)
Footing		$3,638.91
Nontaxable income and additional deductions:		
Charges to reserve for injuries and damages	$2.00	
Depreciation underaccrued	1,526.73	
		1,528.73
Total		$5,167.64
Unallowable deductions and additional income:		
Refund of interest payment on stock	$100.00	
Increase in tax liability reserve	76.71	
		176.71
Profit and loss surplus disclosed by balance sheet at end of year		$4,990.93

[fol. 50]

Schedule 13

Neversink Mountain Railway Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 14

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	($89,373.21)
Corrected net income	None.
Total	($89,373.21)
Nontaxable income and additional deductions	None.
Unallowable deductions and additional income	None.
	0
Profit and loss surplus disclosed by balance sheet at end of year	($89,373.21)

[fol. 51] General Gas and Electric Corporation

Reading and Hamburg Railway Company

Year Ended December 31, 1927

Schedule 15

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 16

Womelsdorf and Myerstown Railway Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 17

Hamburg Gas and Electric Company

Net Income

Net income as disclosed by return		$68,698.80
As corrected		73,085.46
Adjustment		$4,386.66
Unallowable deductions and additional income:		
(a) Bad debts adjusted to actual basis	$557.52	
(b) Depreciation overaccrued	1,452.19	
(c) Increase in tax liability reserve	2,376.95	
Total		$4,386.66

[fol. 52] Schedule 17-a

Explanation of Items Changed

(a) This item represents the net increase in the reserve for bad debts, which was charged to expenses and taken as a deduction from gross income in your income tax return for the taxable year, and since the provisions of sections 214 (a) (7) and 234 (a) (5) of the Revenue Act of 1926, and articles 151 and 155, Regulations 69, have not been complied with the above amount is disallowed.

General Gas and Electric Corporation

Hamburg Gas and Electric Company

Year Ended December 31, 1927

Schedule 17-a (Continued)

Explanation of Items Changed (Continued)

(b) For explanation of this adjustment see item (d) schedule 5-a, above. The amount is computed as follows:

Plant account January 1, 1927	$381,602.83
Plant account December 31, 1927	$578,618.48
Average for the year: ($381,602.83 plus $578,618.48) / 2	$480,110.65
Depreciation rate	2%
Depreciation deducted in return	$11,054.40
Depreciation sustained: ($480,110.65 times 2%)	9,602.21
Amount disallowed	$1,452.19

(c) For explanation of this adjustment, see item (c), schedule 5-a, above.

[fol. 53] Schedule 18

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$122,008.15
Corrected net income	73,085.46
Footing	$195,093.61
Nontaxable income and additional deductions:	
Charges to reserve for bad debts	42.48
Total	$195,136.09

[fol. 54] General Gas and Electric Corporation

Hamburg Gas and Electric Company

Year Ended December 31, 1927

Schedule 18 (Continued)

Reconciliation of Surplus

Unallowable deductions and additional income:		
Brought forward		$195,136.09
Federal income taxes	$8,441.25	
Credit to reserve for bad debts	600.00	
Dividends paid	1,225.00	
Depreciation overaccrued	1,452.19	
Increase in tax liability reserve	2,376.95	
		14,095.39
Profit and loss surplus disclosed by balance sheet at end of year		$181,040.70

Schedule 19

Topton Electric Light and Power Company

Net Income

Net income as disclosed by return	$11,965.52
As corrected	12,250.22
Net adjustment	$284.70

Unallowable deductions and additional income:		
(a) Bad debts adjusted to actual basis	$50.71	
(b) Increase in tax liability reserve	583.82	
Total		$634.53
Nontaxable income and additional deductions:		
(c) Depreciation underaccrued		349.83
Net adjustment as above		$284.70

[fol. 55] Schedule 19-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above.

(b) For explanation of this adjustment see item (c), schedule 5-a, above.

General Gas and Electric Corporation

Topton Electric Light and Power Company

Year Ended December 31, 1927

Schedule 19-a (Continued)

Explanation of Items Changed (Continued)

(c) For explanation of this adjustment see item (b), schedule 7-a, above. The amount is computed as follows:

Plant account January 1, 1927	$111,885.48
Plant account December 31, 1927	$131,873.95
Average for the year:	
($111,885.48 plus $131,873.95)	$121,879.72
2	
Depreciation rate	3½%
Depreciation sustained:	
($121,879.72 times 3½%)	$4,265.79
Depreciation deducted in return	3,915.96
Amount allowed as above	$349.83

[fol. 56] Schedule 20

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year		$27,944.80
Corrected net income		12,250.22
Footing		$40,195.02
Nontaxable income and additional deductions:		
Charges to reserve for bad debts	$249.29	
Depreciation underaccrued	349.83	
		599.12
Total		$40,794.14

[fol. 57] General Gas and Electric Corporation

Topton Electric Light and Power Company

Year Ended December 31, 1927

Schedule 20 (Continued)

Reconciliation of Surplus

Unallowable deductions and additional income:		
Brought forward		$40,794.14
Federal income taxes	$1,700.00	
Addition to reserve for bad debts	300.00	
Dividends paid	376.25	
Increase in tax liability reserve	583.82	
		2,960.07
Profit and loss surplus disclosed by balance sheet at end of year		$37,834.07

Schedule 21

Weisenberg Township Electric Light and Power Company

Year Ended December 31, 1927

Net Income

Net income as disclosed by return	$967.05
As corrected	1,029.03
Net adjustment	$61.98

Unallowable deductions and additional income:		
(a) Bad debts adjusted to actual basis	$112.66	
(b) Increase in tax liability reserve	78.72	
Total		$191.38
Nontaxable income and additional deductions:		
(c) Depreciation underaccrued		129.40
Net adjustment as above		$61.98

[fol. 58] Schedule 21-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above.

(b) For explanation of this adjustment see item (c), schedule 5-a, above.

General Gas and Electric Corporation

Weisenberg Township Electric Light and Power Company

Year Ended December 31, 1927

Schedule 21-a (Continued)

Explanation of Items Changed (Continued)

(c) For explanation of this adjustment see item (b), schedule 7-a, above. The amount is computed as follows:

Plant account January 1, 1927	$15,884.18
Plant account December 31, 1927	$22,355.91
Average for the year:	
$15,884.18 plus $22,355.91)	$19,120.05
2	
Depreciation rate	4%
Depreciation sustained:	
($19,120.05 times 4%)	$764.80
Amount deducted in return	635.40
Amount allowed as above	$129.40

[fol. 59]

Schedule 22

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year		$2,804.25
Corrected net income		1,029.03
Footing		$3,833.28
Nontaxable income and additional deductions:		
Charges to reserve for bed debts	$7.34	
Depreciation underaccrued	129.40	
		136.74
Total		$3,970.02

[fol. 60] General Gas and Electric Corporation

Weisenberg Township Electric Light and Power Company

Year Ended December 31, 1927

Schedule 22 (Continued)

Reconciliation of Surplus

Unallowable deductions and additional income:		
Brought forward		$3,970.02
Federal income taxes	$82.50	
Addition to reserve for bad debts	120.00	
Increase in tax liability reserve	78.72	
		281.22
Profit and loss surplus disclosed by balance sheet at end of year		$3,688.80

Schedule 23

Ortanna Electric Light and Power Company

Net Income

Net income as disclosed by return	$1,774.61
As corrected	1,805.31
Net adjustment	$30.70

Unallowable deductions and additional income:	
(a) Bad debts adjusted to actual basis	$152.28
Nontaxable income and additional deductions:	
(b) Decrease in tax liability reserve	121.58
Net adjustment as above	$30.70

[fol. 61] Schedule 23-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above.

(b) For explanation of this adjustment, see item (c), schedule 5-a, above.

General Gas and Electric Corporation

Ortanna Electric Light and Power Company

Year Ended December 31, 1927

Schedule 24

Reconciliation of Surplus

Profit and loss surplus as disclosed by balance sheet at beginning of year		$5,295.49
Corrected net income		1,805.31
Footing		$7,100.80
Nontaxable income and additional deductions:		
Charges to reserve for bad debts	$27.72	
Decrease in tax liability reserve	121.58	
		149.30
Total		$7,250.10
Unallowable deductions and additional income:		
Federal income taxes	$300.00	
Addition to reserve for bad debts	180.00	
		480.00
Profit and loss surplus disclosed by balance sheet at end of year		$6,770.10

[fol. 62]

Schedule 25

Birdsboro Electric Company

Net Income

Net income as disclosed by return		$15,584.34
As corrected		16,163.57
Net adjustment		$579.23
Unallowable deductions and additional income:		
(a) Increase in reserve for bad debts	$147.00	
(b) Increase in tax liability reserve	805.56	
Total		$952.56
Nontaxable income and additional deductions:		
(c) Depreciation underaccrued		373.33
Net adjustment as above		$579.23

General Gas and Electric Corporation

Birdsboro Electric Company

Year Ended December 31, 1927

Schedule 25-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above.

(b) For explanation of this adjustment see item (c), schedule 5-a, above.

[fol. 63] (c) For explanation of this adjustment see item (b), schedule 7-a, above. The amount is computed as follows:

Plant account January 1, 1927	$50,668.62
Plant account December 31, 1927	$87,998.05
Average for the year:	

($50,668.62 plus $87,998.05)	$69,333.34
2	
Depreciation rate	4%
Depreciation sustained:	
($69,333.34 times 4%)	$2,773.33
Amount deducted in return	2,400.00
Amount allowed as above	$373.33

Schedule 26

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$46,607.43
Corrected net income	16,163.57
Footing	$62,771.00
Nontaxable income and additional deductions:	
Depreciation underaccrued	373.33
Total	$63,144.33

[fol. 64] General Gas and Electric Corporation

Birdsboro Electric Company

Year Ended December 31, 1937

Schedule 26 (Continued)

Reconciliation of Surplus

Unallowable deductions and additional income:		
Brought forward		$63,144.33
Federal income taxes	$2,400.00	
Addition to reserve for bad debts	147.00	
Increase in tax liability reserve	805.56	
		3,352.56
Profit and loss surplus disclosed by balance sheet at end of year		$59,791.77

Schedule 27

The French Creek Electric Company

Net Income

Net income as disclosed by return	$2,109.32
As corrected	2,166.76
Adjustment	$57.44

Unallowable deductions and additional income:

(a) Bad debts adjusted to actual basis	$24.00	
(b) Increase in tax liability reserve	33.44	
Total		$57.44

[fol. 65]

Schedule 27-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above.

(b) For explanation of this adjustment see item (c), schedule 5-a, above.

Schedule 28

Reconciliation of Surplus

Profit and loss surplus as disclosed by balance sheet at beginning of year	($73.66)
Corrected net income	2,166.76
Footing	$2,093.10

[fol. 66] General Gas and Electric Corporation

The French Creek Electric Company

Year Ended December 31, 1927

Schedule 28 (Continued)

Reconciliation of Surplus

Nontaxable income and additional deductions:

Brought forward	$2,093.10
Charges to reserve for bad debts	16.06
Total	$2,109.16

Unallowable deductions and additional income:		
Addition to reserve for bad debts	$40.06	
Increase in tax liability reserve	33.44	
		73.50
Profit and loss surplus disclosed by balance sheet at end of year		$2,035.66

Schedule 29

Bernville Light, Heat and Power Company

Net Income

Net income as disclosed by return	$5,216.24
As corrected	5,365.33
Adjustment	$149.09

Unallowable deductions and additional income:		
(a) Bad debts adjusted to actual basis	$11.75	
(b) Increase in tax liability reserve	137.34	
Total		$149.09

[fol. 67]

Schedule 29-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above.

(b) For explanation of this adjustment see item (c), schedule 5-a above.

General Gas and Electric Corporation

Bernville Light, Heat and Power Company

Year Ended December 31, 1927

Schedule 30

Reconciliation of Surplus

Profit and loss surplus as disclosed by balance sheet at beginning of year	$6,491.24
Corrected net income	5,365.33
Footing	$11,856.57

Nontaxable income and additional deductions:		
Charges to reserve for bad debts		75.67
Total		$11,932.24
Unallowable deductions and additional income:		
Addition to reserve for bad debts	$87.42	
Federal income taxes	600.00	
Increase in tax liability reserve	137.34	
		824.76
Profit and loss surplus as disclosed by balance sheet at end of year		$11,107.48

[fol. 68]

Schedule 31

Berks-Lehigh Electric Company

Net Income

Net income as disclosed by return		$3,723.10
As corrected		4,207.91
Adjustment		$484.81
Unallowable deductions and additional income:		
(a) Bad debts adjusted to actual basis	$86.83	
(b) Increase in tax liability reserve	397.98	
Total		$484.81

Schedule 31-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above.

(b) For explanation of this adjustment see item (c), schedule 5-a, above.

[fol. 69] General Gas and Electric Corporation

Berks-Lehigh Electric Company

Year Ended December 31, 1927

Schedule 32

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year		$9,184.40
Corrected net income		4,207.91
Footing		$13,392.31
Nontaxable income and additional deductions:		
Charges to reserve for bad debts		141.76
Total		$13,534.07
Unallowable deductions and additional income:		
Federal income taxes	$600.00	
Addition to reserve for bad debts	228.59	
Increase in tax liability reserve	397.98	
		1,226.57
Profit and loss surplus disclosed by balance sheet at end of year		$12,307.50

[fol. 70] Schedule 33

Blue Mountain Electric Company

Net Income

Net income as disclosed by return		$28,388.81
As corrected		31,818.58
Adjustment		$3,429.77
Unallowable deductions and additional income:		
(a) Bad debts adjusted to actual basis	$102.95	
(b) Increase in tax liability reserve	3,326.82	
Total		$3,429.77

Schedule 33-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above.

(b) For explanation of this adjustment see item (c), schedule 5-a, above.

[fol. 71] General Gas and Electric Corporation

Blue Mountain Electric Company

Year Ended December 31, 1927

Schedule 34

Reconciliation of Surplus

Surplus and undivided profits as shown by balance sheet at close of preceding taxable period (schedule L, page 2)		$21,354.84
Corrected net income		31,818.58
Footing		$53,173.42
Nontaxable income and additional deductions:		
Charges to reserve for bad debts		188.24
Total		$53,361.66
Unallowable deductions and additional income:		
Federal income taxes	$2,443.08	
Addition to reserve for bad debts	291.19	
Dividends paid	1,750.00	
Increase in tax liability reserve	3,326.82	
		7,811.09
Profit and loss surplus disclosed by balance sheet at end of year		$45,550.57

[fol. 72] Schedule 35

Niantic Electric Light and Power Company

Period July 1, 1927 to October 1, 1927

Net Income

Net income as disclosed by return	$507.72
As corrected	518.95
Adjustment	$11.23

Unallowable deductions and additional income:

(a) Increase in tax liability reserve	$11.23

Schedule 35-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (c), schedule 5-a, above.

[fol. 73] General Gas and Electric Company

Niantic Electric Light and Power Company

Period from January 1, 1927 to October 1, 1927

Schedule 36

Reconciliation of Surplus

Surplus and undivided profits as shown by balance sheet at close of preceding taxable period (schedule L, page 2)		$10,466.60
Corrected net income		518.95
Footing		$10,985.55
Nontaxable income and additional deductions		None.
Total		$10,985.55
Unallowable deductions and additional income:		
Dividends paid	$2,959.00	
Increase in tax liability reserve	11.23	
		2,970.23
Profit and loss surplus disclosed by balance sheet at end of taxable period		$8,015.32

[fol. 74]

Schedule 37

The Jersey Corporation

Year Ended December 31, 1927

Net Income

Net income as disclosed by return	($8,730.06)
As corrected	(6,570.13)
Net adjustment	$2,159.93
Unallowable deductions and additional income:	
(a) Increase in tax liability reserve	$5,725.00
Nontaxable income and additional deductions:	
(b) Depreciation underaccrued	3,565.07
Net adjustment as above	$2,159.93

Schedule 37-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (c), schedule 5-a, above.

General Gas and Electric Corporation

The Jersey Corporation

Year Ended December 31, 1927

Schedule 37-a (Continued)

Explanation of Items Changed (Continued)

(b) For explanation of this adjustment see item (b), schedule 7-a, above. The computation of the amount is as follows:

[fol. 75] Average assets for the year	$118,835.70
Depreciation rate	3%
Depreciation sustained	$3,565.07
Amount deducted in return	None.
Amount allowed as above	$3,565.07

Schedule 38

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	($5,952.71)
Corrected net income	(6,570.13)
Footing	($12,522.84)
Nontaxable income and additional deductions:	
Depreciation underaccrued	3,565.07
Total	($8,957.77)
Unallowable deductions and additional income:	
Increase in tax liability reserve	5,725.00
Profit and loss surplus disclosed by balance sheet at end of year	($14,682.77)

Schedule 39

New Jersey Power and Light Company

Net Income

Net income as disclosed by return	$30,309.01
As corrected	700,160.32
Net adjustment	$669,851.31

[fol. 76] General Gas and Electric Corporation

New Jersey Power and Light Company

Year Ended December 31, 1927

Schedule 39 (Continued)

Net Income

Unallowable deductions and additional income:

(a) Excess credit to reserve for bad debts	$4,500.00
(b) Amortization account plant revaluation	89,314.53
(c) Credit to reserve for injuries and damages	339.22
(d) Increase in tax liability reserve	16,848.12
(e) Depreciation overaccrued	251,527.73
(f) Amortized bond discount overaccrued	307,321.71
Total adjustment	$669,851.31

Schedule 39-a

Explanation of Items Changed

(a) This item represents a portion of the increase in the reserve for bad debts which was taken as a deduction from gross income in your income tax return for the taxable years. Since an examination of your books of account and records indicates that the losses sustained in prior years are relatively small, the above amount is held to be excessive and is disallowed in accordance with the provisions of sections 214(a) (7) and 234(a) (5) of the Revenue Act of 1926 and articles 151 and 155, Regulations 69. The amount is computed as follows:

[fol. 77] Amount added to the reserve and deducted in return	$8,700.00
Addition considered reasonable	4,200.00
Amount disallowed as above	$4,500.00

(b) This item represents unamortized depreciation set up on your books of account and records during the year 1926, in connection with a revaluation of your plant account, for prior years and the amount is disallowed as a deduction from gross income in accordance with the provisions of sections

214(a) and 234(a) of the Revenue Act of 1926 and article 112, Regulations 69.

(c) This item represents an amount claimed as a deduction from gross income, in your income tax return, as charges to the reserve for "Injuries and Damages" in excess of the actual amount charged as disclosed by your books of account and records and is disallowed in accordance with the provisions section 234(a) of the Revenue Act of 1926 and article 561, Regulations 69. The amount is computed as follows:

General Gas and Electric Corporation

New Jersey Power and Light Company

Year Ended December 31, 1927

Schedule 39-a (Continued)

Explanation of Items Changed (Continued)

(c) (Continued)

Amount deducted in return	$3,079.37
Amount charged to reserve	2,740.15
Amount disallowed	$339.22

[fol. 78] (d) For explanation of this adjustment see item (c), schedule 5-a, above.

(e) For explanation of this adjustment see item (d), schedule 5-a, above. The amount is computed as follows:

Plant account January 1, 1927		$11,103,348.77
Less:		
Land	$1,132,220.01	
Obsolete Generating Plant	214,124.64	
Intangibles	677,235.45	
Appreciation	1,931,096.69	
		3,954,676.79
Depreciable assets at January 1, 1927		$7,148,671.98
Plant account at December 31, 1927		$12,683,499.91

Less:		
Land	$1,247,300.83	
Organization	330,500.37	
Engineering	42,290.54	
Interest	170,943.37	
Intangibles	677,235.45	
Obsolete Generating Plant	214,124.64	
Appreciation	1,931,096.69	
		4,613,491.89
Depreciable assets at December 31, 1927		$8,070,008.02
Average depreciable assets for the year:		
($7,148,671.98 plus $8,070,008.02) / 2		$7,609,340.00

[fol. 79] General Gas and Electric Corporation

New Jersey Power and Light Company

Year Ended December 31, 1927

Schedule 39-a (Continued)

Explanation of Items Changed (Continued)

(e) (Continued)

Average depreciable assets for year brought forward	$7,609,340.00
Depreciation rate	2%
Depreciation deducted in return	$403,714.53
Depreciation sustained ($7,609,340.00 times 2%)	152,186.80
Amount disallowed as above	$251,527.73

(f) This item represents the balance of unamortized discount and expense, at December 31, 1926, plus the premium paid in connection with the redemption and refunding of $2,087,000.00 par value of the corporations First Mortgage 5% twenty year bonds, due in 1936. Since the bonds were retired with the proceeds of a refunding issue of first mortgage 5% bonds due in 1956, the Bureau holds that the above

amount should be amortized over the life of the refunding issue. The amount is computed as follows:

[fol. 80] Unamortized discount and expenses at December 31, 1926 applicable to bonds due in 1936, redeemed	$212,442.13
Premium paid in connection with redemption	104,350.00
Total discount and premium	$316,792.13
Less:	
Amount amortized during 1927	9,470.42
Amount disallowed as above	$307,321.71

Schedule 40

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$555,338.48
Corrected net income	700,160.32
Footing	$1,255,498.80

[fol. 81] General Gas and Electric Corporation

New Jersey Power and Light Company

Year Ended December 31, 1927

Schedule 40 (Continued)

Reconciliation of Surplus

Brought forward		$1,255,498.80
Notaxable income and additional deductions:		
Interest charged to construction	$19,222.71	
Net charges to reserve for injuries and damages	2,740.15	
Loss on sale of capital assets	74,392.88	
Taxes charged to capital account	377.15	
		96,732.89
Total		$1,352,231.69

Unallowable deductions and additional income:		
Federal income taxes	$51,193.66	
Additions to reserve for injuries and damages	6,000.00	
Excess credit to reserve for bad debts	4,500.00	
Dividends paid	365,703.68	
Increase in tax liability reserve	16,848.12	
Depreciation overaccrued	251,527.73	
		695,773.19
Profit and loss surplus disclosed by balance sheet at end of year		$656,458.50

[fol. 82] Schedule 41

Northern Pennsylvania Power Company

Net Income

Net income as disclosed by return		$60,455.19
As corrected		190,999.41
Adjustment		$130,544.22
Unallowable deductions and additional income:		
(a) Bad debts adjusted to actual basis	$2,265.46	
(b) Excessive loss on sale of capital assets	9,597.96	
(c) Increase in tax liability reserve	21,396.92	
(d) Depreciation overaccrued	64,136.67	
(e) Amortization of discount and expenses overaccrued	32,634.71	
(f) Premium paid for bonds reacquired for sinking fund	512.50	
Total adjustment		$130,544.22

General Gas and Electric Corporation

Northern Pennsylvania Power Company

Year Ended December 31, 1927

Schedule 41-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (a), schedule 17-a, above. The amount is computed as follows:

[fol. 83] Addition to reserve for bad debts deducted in return	$4,800.00
Charges to the reserve allowed	2,534.54
Excessive deduction disallowed	$2,265.46

(b) This item represents an excessive loss deducted from gross income in your income tax return, in connection with the sale of capital assets during the taxable year and is disallowed in accordance with the provisions of section 204 of the Revenue Act of 1926 and article 1591, Regulations 69. The amount is computed as follows:

Amount deducted in return		$37,506.40
Corrected loss sustained:		
Cost of property sold	$58,425.24	
Less:		
Depreciation sustained	$27,343.92	
Sale price	3,172.88	
	30,516.80	
Corrected loss		27,908.44
Excessive loss as above		$9,597.96

(c) For explanation of this adjustment see item (c), schedule 5-a, above.

(d) For explanation of this adjustment see item (d), schedule 5-a, above. The amount is computed as follows:

Plant account January 1, 1927	$3,562,054.80
Less:	
Non depreciable assets	942,545.23
Depreciable assets at January 1, 1927	$2,619,509.57
Plant account at December 31, 1927	$4,109,368.74

[fol. 84] General Gas and Electric Corporation

Northern Pennsylvania Power Company

Year Ended December 31, 1927

Schedule 41-a (Continued)

Explanation of Items Changed (Continued)

(d) (Continued)

Brought forward	$4,109,368.74
Less:	
Nondepreciable assets	942,545.23
Depreciable assets at December 31, 1927	$3,166,823.51
Average depreciable assets for the year: ($2,619,509.57 plus $3,166,823.51)	$2,893,166.54
2	
Depreciation rate	2%
Depreciation deducted in return	$122,000.00
Depreciation sustained: ($2,893,166.54 times 2%)	57,863.33
Amount disallowed as above	$64,136.67

(e) For explanation of this adjustment see item (f), schedule 39-a, above. The amount is computed as follows:

Unamortized discount and expenses on $183,800.00 par value of first mortgage 6% bonds refunded	$23,444.71
5% Premium paid at date of redemption	9,190.00
Total amount disallowed	$32,634.71

(f) Inasmuch as the bonds, on which this premium was paid, have been placed in the sinking fund and not retired, the above amount is disallowed as a deduction from gross income in accordance with the provisions of article 545(1) (b), Regulations 69.

[fol. 85] General Gas and Electric Corporation

Northern Pennsylvania Power Company

Year Ended December 31, 1927

Schedule 42

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year		$107,118.35
Corrected net income		190,999.41
Footing		$298,117.76
Nontaxable income and additional deductions:		
Interest charged to construction	$4,790.24	
Dismantling cost charged to depreciation reserve	5,505.91	
Loss on sale of capital assets	27,908.44	
Taxes charged to capital accounts	1,228.20	
Dividends received	30.00	
Charges to reserve for bad debts	2,534.54	
		41,997.33
Total		$340,115.09
Unallowable deductions and additional income:		
Federal income taxes	$18,319.17	
Addition to reserve for bad debts	4,800.00	
Dividends paid	117,843.02	
Increase in tax liability reserve	21,396.92	
Depreciation overaccrued	64,136.67	
Adjustment of debt discount and expense charged to income	5,033.04	
Premium paid on bonds reacquired for sinking fund	512.50	
		232,041.32
Profit and loss surplus disclosed by balance sheet at end of year		$108,073.77

[fol. 86] Schedule 43

The Waverly Electric Light and Power Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

General Gas and Electric Corporation

The Nicholson Light, Heat and Power Company

Period January 1, 1927 to October 31, 1927

Schedule 44

Net Income

Net income as disclosed by return	$1,596.29
As corrected	1,628.73
Adjustment	$32.44

Unallowable deductions and additional income:

(a) Adjustment of cash—cr. to profit and loss	$32.44

Schedule 44-a

Explanation of Items Changed

(a) This item represents an adjustment of the cash account the amount of which was credited to profit and loss during the taxable year and is added to taxable income in accordance with the provisions of section 233(a) of the Revenue Act of 1926 and article 541, Regulations 69.

[fol. 87] Schedule 45

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of period	$10,306.42
Corrected net income	1,628.73
Footing	$11,935.15
Nontaxable income and additional deductions	None.
Total	$11,935.15

Unallowable deductions and additional income:		
Federal income taxes	$207.66	
Dividends paid	11,727.49	
		11,935.15
Profit and loss surplus disclosed by balance sheet at end of year		None.

[fol. 88] General Gas and Electric Corporation

Broad River Power Company

Year Ended December 31, 1927

Schedule 46

Net Income

Net income as disclosed by return		$16,091.26
As corrected		399,730.80
Net adjustment		$383,639.54
Unallowable deductions and additional income:		
(a) Cost of stock of Parr Shoals Power Company	$1,005.00	
(b) Intercompany accounts receivable	122,123.47	
(c) Cost of changing equipment	72,019.77	
(d) Obsolescence	30,414.19	
(e) Increase in tax liability reserve	419.82	
(f) Amortized discount and expense on bonds of Parr Shoals Power Company	11,436.96	
(g) Profit on bonds reacquired and retired	20,550.00	
(h) Loss on sale of capital assets charged to reserve for renewals and replacements	125,670.33	
Total adjustment as above		$383,639.54

[fol. 89] Schedule 46-a

Explanation of Items Changed

(a) This item represents the cost of capital stock of the Parr Shoals Power Company acquired during the taxable year which was charged to reserve for contingencies and deducted from gross income in your income tax return. The amount is held to be a capital expenditure and is disallowed in accordance with the provisions of section 235 of the Revenue Act of 1926 and article 581, Regulations 69.

(b) This item represents an intercompany transaction and is disallowed as a deduction from gross income in accordance with section 240 of the Revenue Act of 1926, and article 635, Regulations 69.

General Gas and Electric Corporation

Broad River Power Company

Year Ended December 31, 1927

Schedule 46-a (Continued)

Explanation of Items Changed (Continued)

(c) This item represents the cost incurred in connection with the conversion of the corporation's equipment from 40 to 60 cycle which was charged to the reserve for contingencies, and taken as a deduction from gross income in your income tax return for the taxable year. The amount is held to be a capital expenditure and is disallowed in accordance with the provisions of section 235 of the Revenue Act of 1926 and article 581, Regulations 69.

[fol. 90] (d) Inasmuch as this item has not been charged off the books, and no information has been submitted to show how the computation was made, the amount is disallowed as a deduction from gross income in accordance with the provisions of section 214(a) (8) of the Revenue Act of 1926 and article 166, Regulations 69.

(e) For explanation of this adjustment see item (c), schedule 5-a, above.

(f) This item represents unamortized discount and expenses acquired by the corporation together with the assets of other companies and the amount is disallowed as a deduction from gross income in accordance with the provisions

of the decision of the United States Board of Tax Appeals in the case of the Western Maryland Railroad Company as published in United States Board of Tax Appeals Reports, volume 12, page 889.

(g) This item represents profit realized during the taxable year in connection with the reacquirement and retirement of $822,000.00 par value of First Mortgage 5% Sinking Fund Bonds and the amount is added to taxable income in accordance with the provisions of section 233(a) of the Revenue Act of 1926 and article 545(a) (c), Regulations 69.

(h) Inasmuch as this item has not been charged off the books, and no information has been submitted to show how the computation was made, the amount is disallowed as a deduction from gross income in accordance with the provisions of section 204 of the Revenue Act of 1926 and article 1591, Regulations 69.

[fol. 91] General Gas and Electric Corporation

Broad River Power Company

Year Ended December 31, 1927

Schedule 47

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year		$627,402.59
Corrected net income		399,730.80
Footing		$1,027,133.39
Nontaxable income and additional deductions:		
Interest charged to construction	$41,293.20	
Amortized bond discount and expense	1,107.79	
Charges to reserve for contingencies	340,046.15	
Taxes capitalized on books	1,295.74	
Profit on bonds reacquired for sinking fund	1,322.50	
		385,065.38
Total		$1,412,198.77

Unallowable deductions and additional income:		
Federal income taxes	$35,768.89	
Dividends paid	438,849.93	
Cost of capital stock of Parr Shoals Power Company	1,005.00	
Intercompany accounts receivable	122,123.47	
Cost of changing equipment to 60 Cycle	72,019.77	
Obsolescence	30,414.19	
Increase in tax liability reserve	419.82	
Amortized discount and expense on bonds of Parr Shoals Power Company	11,436.96	
Profits on bonds reacquired and retired	20,550.00	
		732,588.03
Profit and loss surplus disclosed by balance sheet at end of year		$679,610.74

[fol. 92]

Schedule 48

Columbia Railway Gas and Electric Company

Net Income

Net income as disclosed by return	($335,607.57)
As corrected	(57,157.39)
Net adjustment	$278,450.18

General Gas and Electric Corporation

Columbia Railway Gas and Electric Company

Year Ended December 31, 1927

Schedule 48 (Continued)

Net Income

Unallowable deductions and additional income:	
(a) Obsolescence	$274,117.51
(b) Loss on sale of capital assets	1,236.78
(c) Increase in tax liability reserve	3,095.89
Total adjustment	$278,450.18

Schedule 48-a

Explanation of Items Changed

(a) This item represents obsolescence, claimed as a deduction from gross income in your income tax return for the taxable year, and since the information submitted with the return does not meet the requirements of the Bureau the amount is disallowed in accordance with the provisions of section 214(a) (8) of the Revenue Act of 1926 and article 166, Regulations 69.

[fol. 93] (b) Since the information submitted with respect to this item does not meet the requirements of the Bureau the amount is disallowed in accordance with the provisions of section 204 of the Revenue Act of 1926 and article 1591, Regulations 69.

(c) For explanation of this adjustment see item (c), schedule 5-a, above.

Schedule 49

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$9,054.19
Corrected net income	(57,157.39)
Footing	($48,103.20)
Nontaxable income and additional deductions:	
Charges to reserve for contingencies	316,338.94
Total	$268,235.74

[fol. 94] General Gas and Electric Corporation

Columbia Railway Gas and Electric Company

Year Ended December 31, 1927

Schedule 49 (Continued)

Reconciliation of Surplus

Brought forward	$268,235.74

Unallowable deductions and additional income:		
Obsolescence	$274,117.51	
Increase in tax liability reserve	3,095.89	
Loss on sale of capital assets	1,236.78	
		278,450.18
Profit and loss surplus disclosed by balance sheet at end of year		($10,214.44)

Schedule 50

Public Service Company of South Carolina

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 51

Columbia Gas Light Company

Net Income

Net income as diclosed by return	None.
As corrected	No change.

[fol. 95]

Schedule 52

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	($52,538.17)
Corrected net income	None.
Footing	($52,538.17)
Nontaxable income and additional deductions:	
Donation and cancellation of 1800 shares of capital stock	180,000.00
Profit and loss surplus disclosed by balance sheet at end of year	$127,461.83

[fol. 96] General Gas and Electric Corporation
North Carolina Public Service Company
Period January 1, 1927 to August 1, 1927
Schedule 53
Net Income

Net income as diclosed by return		$170,587.90
As corrected		217,488.05
Net adjustment		$46,900.15
Unallowable deductions and additional income:		
(a) Charges to reserve for bad debts	$4,365.90	
(b) Bad debts charged to reserve for contingencies	3,034.91	
(c) Profit on bonds purchased and retired	65.24	
(d) Investment in securities written down	1,000.00	
(e) Depreciation	70,000.00	
(f) Profit on sale of capital assets	21,868.10	
(g) Amortized discount and expense on bonds of other companies	4,451.09	
Total		$104,785.24
Nontaxable income and additional deductions:		
(h) Addition to reserve for bad debts	$12,600.00	
(i) Decrease in tax liability reserve	45,285.09	
Total		57,885.09
Net adjustment as above		$46,900.15

[fol. 97] Schedule 53-a

Explanation of Items Changed

(a) and (b) These items represent losses sustained during the taxable year, in connection with accounts receivable,

charged to the reserves for bad debts and contingencies and taken as deductions from gross in your income tax return. Since the corporation has established a reserve for bad debts and reasonable amounts credited thereto have been allowed as deductions in prior years the above-stated amounts are disallowed. The amount accrued and credited to the reserve for bad debts is allowed as a deduction under item (h) below, in accordance with the provisions of section 234(a) (5) of the Revenue Act of 1926 and article 155, Regulations 69.

General Gas and Electric Corporation
North Carolina Public Service Company
Period January 1, 1927 to August 1, 1927
Schedule 53-a (Continued)
Explanation of Items Changed (Continued)

(c) For explanation of this adjustment see item (g), schedule 46-a, above.

(d) This item represents a reduction in the value of 12 shares of South Atlantic Export Company preferred stock and the amount is disallowed as a deduction in accordance with the provisions of section 234(a) (4) of the Revenue Act of 1926 and article 144, Regulations 69.

[fol. 98] (e) Inasmuch as the information submitted relative to this deduction for depreciation does not meet the requirements of the Bureau the amount is disallowed in accordance with the provisions of section 214(a) (8) of the Revenue Act of 1926 and articles 161 and 162, Regulations 69.

(f) This item represents losses sustained in connection with the sale, or other disposition, of capital assets during the taxable year and since the information submitted does not meet the requirements of the Bureau the amount is disallowed in accordance with the provisions of section 234(a) (4) of the Revenue Act of 1926 and articles 141 and 1591, Regulations 69.

(g) For explanation of this adjustment see item (f), schedule 46-a, above.

(h) For explanation of this adjustment see items (a) and (b), this schedule.

(i) For explanation of this adjustment see item (c), schedule 5-a, above.

Schedule 54

Year Ended December 31, 1927

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$418,597.22
Corrected net income	217,488.05
Footing	$636,085.27

[fol. 99] General Gas and Electric Corporation

North Carolina Public Service Company

Year Ended December 31, 1927

Schedule 54 (Continued)

Reconciliation of Surplus

Brought forward		$636,085.27
Nontaxable income and additional deductions:		
Dividends received from stock of domestic corporations	$162.50	
Interest charged to construction	4,934.10	
Charges to reserve for bad debts	13,416.78	
Charges to reserve for injuries and damages	1,966.56	
Charges to reserve for depreciation on autos	450.00	
Charges to reserve for contingencies	106,231.99	
Taxes charged to cost of assets on books	246.08	
Decrease in tax liability reserve	45,285.09	
Federal income taxes credited to surplus	38,281.49	
		210,974.59
Total		$847,059.86

Unallowable deductions and additional income:

Dividends paid	$206,469.91	
Addition to reserve for injuries and damages	2,100.00	
Discount and expense deducted in 1926 charged to profit and loss in 1927	3,764.88	
Charges to reserve for bad debts	4,365.90	
Bad debts charged to reserve for contingencies	3,034.91	
Investment in securities written down	1,000.00	
Depreciation not charged off	70,000.00	
Profit on sale of capital assets	21,868.10	
Amortized discount on bonds of other companies	4,451.09	
		317,054.79
Profit and loss surplus disclosed by balance sheet at end of year		$530,005.07

[fol. 100] General Gas and Electric Corporation

Salisbury and Spencer Railway Company

Period January 1, 1927 to August 1, 1927

Schedule 55

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 56

Greensboro Bus Company

Net Income

Net income as disclosed by return	(2,006.77)
As corrected	No change.

Schedule 57

Year Ended December 31, 1927

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	($6,736.53)
Income disclosed by return	(2,006.77)
Profit and loss surplus disclosed by balance sheet at end of year	($8,743.30)

[fol. 101]

Schedule 58

Saylorsburg Light and Power Company

Period January 1, 1927 to July 31, 1927

Net Income

Net income as disclosed by return	$2,000.31
As corrected	1,978.67
Adjustment	$21.64

Nontaxable income and additional deductions:

(a) Decrease in tax liability reserve	$21.64

Schedule 58-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (c), Schedule 5-a, above.

[fol. 102]

General Gas and Electric Corporation

Saylorsburg Light and Power Company

Year Ended December 31, 1927

Schedule 59

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$39,146.34
Corrected net income	1,978.67
Footing	$41,125.01

Nontaxable income and additional deductions:	
Decrease in tax liability reserve	21.64
Total	$41,146.65
Unallowable deductions and additional income:	
Federal income taxes	115.00
Profit and loss surplus disclosed by balance sheet at end of year	$41,031.65

[fol. 103]

Schedule 60

Pen Argyl Gas Company

Period January 1, 1927 to July 31, 1927

Net Income

Net income as disclosed by return	($2,278.04)
As corrected	(2,196.99)
Adjustment	$81.05
Unallowable deductions and additional income:	
(a) Increase in tax liability reserve	$81.05

Schedule 60-a

Explanation of Items Changed

(a) For explanation of this adjustment see item (c), schedule 5-a, above.

[fol. 104] **General Gas and Electric Corporation**

Pen Argyl Gas Company

Year Ended December 31, 1927

Schedule 61

Reconciliation of Surplus

Profit and loss surplus disclosed by balance sheet at beginning of year	$13,262.65
Corrected net income	(2,196.99)
Footing	$11,065.66

Nontaxable income and additional deductions:		
Bad debts written off		250.69
Total		$11,316.35
Unallowable deductions and additional income:		
Federal income taxes	$175.00	
Increase in tax liability reserve	81.05	
		256.05
Profit and loss surplus disclosed by balance sheet at end of year		$11,060.30

Schedule 62

New Jersey Power Corporation

Period January 1, 1927 to July 5, 1927

Net Income

Net income as disclosed by return	($1,275.00)
As corrected	No change.

[fol. 105]

General Gas and Electric Corporation

Year ended December 31, 1927

Schedule 63

Consolidated Net Income

Net Income as corrected:

General Gas and Electric Corporation	Schedule 1	$1,136,784.77
Reading Transit Company	5	280,838.21
Neversink Mountain Railway Company	13	-0-
Reading and Hamburg Railway Company	15	-0-
Womelsdorf & Myerstown Railway Company	16	-0-
Hamburg Gas and Electric Company	17	73,085.46
Topton Electric Light & Power Company	19	12,250.22
Weisenberg Township Electric Light & Power Company	21	1,029.03
Ortanna Electric Light and Power Company	23	1,805.31
Birdsboro Electric Company	25	16,163.57
The French Creek Electric Company	27	2,166.76
Bernville Light, Heat and Power Company	29	5,365.33
Berks-Lehigh Electric Company	31	4,207.91
Blue Mountain Electric Company	33	31,818.58
Niantic Electric Light and Power Company	35	518.95
New Jersey Power and Light Company	39	700,160.32
Northern Pennsylvania Power Company	41	190,999.41
The Waverly Electric Light and Power Company	43	-0-

Schedule 63—Consolidated Net Income—Continued

Net Income as corrected—Continued

The Nicholson Light, Heat and Power Company	44	1,628.73	
Broad River Power Company	46	399,730.80	
Public Service Company of South Carolina	50	-0-	
Columbia Gas Light Company	51	-0-	
North Carolina Public Service Company	53	217,488.05	
Salisbury and Spencer Railway Company	55	-0-	
Saylorsburg Light and Power Company	58	1,978.67	
Total			$3,078,020.08

Net losses as corrected:

The General Finance Corporation	Schedule 3	$38,881.87	
Oley Valley Railway Company	7	2,463.83	
Oley Valley Quarry Company	9	143.52	
Reading Transit Bus Company	11	1,999.40	
The Jersey Corporation	37	6,570.13	
Columbia Railway Gas and Electric Company	48	57,156.39	
Greensboro Bus Company	56	2,006.77	
Pen Argyl Gas Company	60	2,196.99	
New Jersey Power Corporation	62	1,275.00	
Total			112,694.90
Consolidated net income			$2,965,325.18

General Gas and Electric Corporation — Year ended December 31, 1927

[fol. 106] Schedule 64

Computation of Tax—1927 Rates

		Income	Tax
Corrected consolidated net income, schedule 63 taxable at 13½%		$2,965,325.18	$400,318.90
Tax previously assessed:			
Original No. 401,703	$24,300.00		
Additional (February 1931, Page 1, Line 3 #1.)	128,855.54	153,155.54	
Less:			
Amount of tax allocated to Binghamton Light, Heat and Power Company		30,740.46	122,415.08
Additional tax to be assessed			$277,903.82

Exhibit "B" to Petition

General Gas & Electric Corporation

Taxpayers engaged in related trades or businesses The same as determined by the respondent except:	Period of ownership or control The same as determined by the respondent except:
(1) Florida Public Service Company	January 1, 1927 to December 31, 1927
(2) Lexington Water Power Company	January 1, 1927 to December 31, 1927
(3) South Carolina Gas & Electric Company	January 1, 1927 to July 31, 1927
(4) Metropolitan Edison Company	January 1, 1927 to December 31, 1927
(5) Binghamton Light, Heat & Power Company	January 1, 1927 to December 31, 1927

[fol. 107] BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

ANSWER—Filed September 26, 1931

The Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above named taxpayer, admits and denies as follows:

I. Admits the allegations contained in Paragraph I.

II. Admits the allegations contained in Paragraph II.

III. Admits the allegations contained in Paragraph III.

IV. Admits that the taxes in controversy are income taxes for the year ended December 31, 1927, and that the amount in controversy is as shown by the notice of deficiency, a copy of which is attached to the petition and marked Exhibit "A," as alleged in Paragraph III(g) of the petition; denies that the amount in controversy is $463,957.88.

[fol. 108] V (A) to (E), inclusive. Denies that the Commissioner has committed any errors as alleged in subparagraphs (A) to (E), inclusive, of Paragraph V.

VI(A), (A-1) and (A-2). Denies the allegations contained in subparagraphs (A), (A-1) and (A-2) of Paragraph VI.

VI(B), (B-1), (B-2) and (B-3). Denies the allegations contained in subparagraphs (B), (B-1), (B-2) and (B-3) of Paragraph VI.

VI(C) (1) to (61), inclusive. Denies the allegations contained in subparagraphs (1) to (61), inclusive, of Paragraph VI(C).

VI(D) (1) to (3), inclusive. Denies the allegations contained in subparagraphs (1) to (3), inclusive, of Paragraph VI(D).

VI(E). Denies the allegations contained in Paragraph VI(E).

VII. Denies generally and specifically each and every allegation contained in taxpayer's petition and not hereinbefore admitted, qualified, or denied.

Wherefore, it is prayed that the taxpayer's appeal be denied.

(Signed) C. M. Charest, General Counsel, Bureau of Internal Revenue.

Of Counsel: Eugene Meacham, C. E. Lowery, Special Attorneys, Bureau of Internal Revenue.

[fol. 109] BEFORE UNITED STATES BOARD OF TAX APPEALS, WASHINGTON, D. C.

Docket No. 59,469

GENERAL GAS & ELECTRIC CORPORATION, Petitioner,

Docket No. 59,470

BINGHAMTON LIGHT, HEAT AND POWER COMPANY, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

STIPULATION OF FACTS—Filed January 3, 1935

It is hereby stipulated and agreed, by and between the parties hereto, by their respective attorneys, that the above-entitled proceedings be consolidated for hearing before the Board of Tax Appeals, and that the following facts shall be taken as true, provided this stipulation shall be without prejudice to the right of either party to present further evidence not inconsistent with the facts herein stipulated.

1. The petitioner, General Gas & Electric Corporation, a corporation duly organized and existing under the laws [fol. 110] of the State of Delaware, is and was at all times material to this proceeding, engaged in the business of holding securities and thus controlling public utility subsidiaries serving in the States of New York, New Jersey, Pennsylvania, Maryland, North Carolina, South Carolina and Florida.

2. The petitioners, with their affiliated taxpayers, filed a consolidated income tax return for the calendar year 1927. A list of the affiliated taxpayers appears on pages 1 to 4, inclusive, of the deficiency notice, being Exhibit A at-

tached to the petition, Docket No. 59,469, and to which should be added the name of Binghamton Light, Heat and Power Company as an affiliated subsidiary of General Gas & Electric Corporation, which joined in filing the said consolidated return. By an agreement signed by the parent corporation and each of its subsidiaries, the entire income tax liability of each of the petitioners and their affiliates, in these consolidated appeals for the year 1927 is to be assessed against and paid by the said General Gas & Electric Corporation.

3. The North Penn Power Company was a corporation organized under the laws of Pennsylvania in March, 1923. In 1923 it issued and sold its First Mortgage Thirty year 6% Sinking Fund Gold Bonds due February 1, 1953, at a discount and also incurred expenses of issue and sale. The trust agreement under which said bonds were issued provided that they might be called and redeemed at 105% of the principal amount on any interest date up to February 1, 1933. On or about March 9, 1926, the North Penn Power [fol. 111] Company transferred all its assets and liabilities to the Northern Pennsylvania Power Company, an affiliated subsidiary of the petitioner, under the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876 P. L. 30 of the Laws of the Commonwealth of Pennsylvania, with the sanction and approval of the Public Service Commission of said commonwealth under Section 3(c) Article III and Sections 18 and 19 Article V of the Public Service Company Law with the issuance of a report, order and certificate of public convenience. (Copies of the report, order and certificate of public convenience and the application of the companies to the Public Service Commission are attached hereto, and made a part hereof, marked Exhibit A).

As a result of said transfer the Northern Pennsylvania Power Company took over all the assets and assumed all the liabilities of the North Penn Power Company including the liability on the aforesaid Bonds which constituted a prior lien on the assets so transferred. The further consideration for said transfer was cash, for the retirement of the preferred stock, and common stock of said transferee issued in exchange for the surrender of the common stock of the transferor. The principal amount of the bonds outstanding was $552,700.00 on date of transfer. The unamortized debt discount and expense incurred upon the issuance and sale of

said bonds was transferred as a deferred charge asset on the books of Northern Pennsylvania Power Company. The [fol. 112] balance of this unamortized debt discount and expense amounted to $70,499.79 at the time the $368,900.00 principal amount of bonds were retired in 1926.

In 1926 the Northern Pennsylvania Power Company called for redemption on February 1, 1927, all the outstanding bonds and redeemed $368,900 principal amount of said bonds (being 66.745% of the principal amount of $552,700.00 then outstanding) thereby incurring and paying premiums in the amount of $18,445.00 (being 5% of the principal amount of the bonds retired) in accordance with the terms of the Trust Indenture. On or about February 1, 1927, the balance of the outstanding bonds in the amount of $183,800 were redeemed, thereby incurring and paying premiums in the amount of $9,190.00 (being 5% of the principal amount of the bonds retired in accordance with the terms of the Trust Indenture).

The date of the redemption was February 1, 1927, but by proper corporate authorization the trustee under the Indenture accepted for retirement said $368,900.00 principal amount of bonds at 105% and accrued interest to the date of retirement during 1926, and the balance of the outstanding bonds amounting to $183,800, were retired on or about February 1, 1927 at 105. The petitioners in dockets nos. 52,639, 52,680 and 49,079, separately stipulated, but consolidated for hearing purposes with this proceeding, claimed the right to deduct from the gross income of Northern Pennsylvania Power Company for 1926 said premiums amounting to $18,445.00 and unamortized debt discount and [fol. 113] expense amounting to $47,058.08, (being 66.745% of the aforesaid $70,499.79). The petitioners claim the right to deduct the aforesaid premium of $9,190.00 and said unamortized debt discount and expense amounting to $23,441.71 (being the balance of the aforesaid $70,499.79) unamortized upon the aforesaid retirements at February 1, 1927. Said amounts of $23,441.71 unamortized debt discount and expense and $9,190.00 premiums on retirement of said bonds in 1927, were not taken as an expense on the books of the Northern Pennsylvania Power Company, but were transferred to debt discount and expense applicable to the refunding issue. The funds for the retirement of said first mortgage thirty year sinking fund 6% and 7% Gold Bonds were obtained from the proceeds of sale in 1926 of $1,-

950,000.00 principal amount Northern Pennsylvania Power Company, First and Refunding Mortgage Bonds Series A due June 1, 1956.

4. New Jersey Power and Light Company was incorporated under the laws of the State of New Jersey in December, 1915. On or about February 1, 1916, it made and executed a certain indenture, excerpts from which are attached hereto and marked Exhibit B. Thereafter said New Jersey Power and Light Company issued and sold to the public its First Mortgage 5% Gold Bonds, due February 1, 1936, provided for in said indenture, as follows:

[fol. 114]

Year Issued	Principal Amount	Sales Price	
1916	$700,000.00 @ 86	$602,000.00	
1918	197,000.00 @ 80	157,600.00	
1918	23,000.00 @ 83	19,090.00	
1918	9,000.00 @ 84	7,560.00	
1919	62,000.00 @ 83	51,460.00	
1920	18,000.00 @ 80	14,400.00	
1921	361,000.00 @ 80	288,800.00	
1922	27,000.00 @ 100	27,000.00	(Issued for Property)
1922	100,000.00 @ 80	80,000.00	
1923	250,000.00 @ 87	217,500.00	
1923	200,000.00 @ 85½	171,000.00	
1924	465,000.00 @ 86½	402,225.00	
1924	97,000.00 @ 100	97,000.00	(Issued for Stock)
1925	180,000.00 @ 100	180,000.00	(Issued for Property)
Totals	$2,689,000.00	$2,315,635.00	
Total discount		$373,365.00	

5. During 1927 the New Jersey Power and Light Company retired all of said bonds then outstanding (principally on February 1, 1927), amounting to the sum of $2,087,000, at 105, in accordance with the terms of the indenture (see article third Exhibit B) said premiums amounting to $10[illegible] 350—at which time there was unamortized debt discount and expense amounting to $179,687.23, of which $9,470.42 was allowed by the Commissioner as amortization over the life of the new bonds (see page 28 of deficiency notice, Ex-[fol. 115] hibit A attached to the petition in Docket No. 59,469), more particularly known as First Mortgage 5% Gold Bonds, due August 1, 1956, of which there were issued and sold on December 29, 1926, $6,000,000, the proceeds from the sale of which were employed to retire the aforesaid bonds due February 1, 1936. At the time of the aforesaid

retirement, none of the bonds were held by affiliated taxpayers.

6. The only issues submitted to the Board for redetermination in this proceeding are whether the respondent erred in refusing to allow as deductions from gross income of the petitioner's affiliated subsidiaries for the year 1927 the aforesaid premiums, retirement expenses and unamortized debt discounts and expenses. All other issues raised by the pleadings have been settled by agreement of the parties and the result of such settlement is reflected in the following stipulation as to the amounts of deficiency, to wit:

a. If the action of the respondent in disallowing the aforesaid premiums, debt retirement expenses and unamortized debt discounts and expense is sustained, the amount of the deficiency for the calendar year 1927 is $181,205.07.

b. If the action of the respondent in disallowing the aforesaid premiums, debt retirement expense and unamortized debt discounts and expenses is disapproved the amount of the deficiency is $139,733.08.

If the Board's decision is otherwise than indicated in paragraphs "a" or "b" supra, the deficiency should be de-
[fol. 116] termined under Board Rule 50.

Francis J. Sweeney, Counsel for Petitioner. (Signed) Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, Counsel for the Respondent.

EXHIBIT "A" TO STIPULATION OF FACTS

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

STATE OF PENNSYLVANIA,
County of Dauphin, ss:

I, John G. Hopwood, Secretary of the Public Service Commission of the Commonwealth of Pennsylvania, do hereby certify that the papers hereto attached are true and correct copies of the report, order and certificate of public convenience issued by the Commission under date of March 9th, 1926, in re: Application North Penn Power Company

and Northern Pennsylvania Power Company, for approval of the sale of the franchises and property of the former to the latter company, as the same remain of record in the offices of the Commission, at Application Docket No. 13917-1925.

[fol. 117] In Testimony Whereof, I have hereunto set my hand and caused the seal of the Commission to be affixed hereto this twenty-fourth day of March, 1926.

Jno. G. Hopwood, Secretary, The Public Service Commission of the Commonwealth of Pennsylvania.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

A.13917—1925

In the Matter of the Application of NORTH PENN POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY, under Section 3(c), Article III, and Sections 18 and 19, Article V, of The Public Service Company Law, for the Approval of the Sale of the Property and Franchises of the Former to the Latter Company

CERTIFICATE OF PUBLIC CONVENIENCE

The Public Service Commission of the Commonwealth of Pennsylvania, hereby certifies that after an investigation and hearing had on the above entitled application, it has, by [fol. 118] its report and order made and entered, a copy of which is hereto attached and made a part hereof, found and determined that the granting of said application is necessary and proper for the service, accommodation, convenience and safety of the public, and this certificate is issued evidencing its approval of the said application as set forth in said report and order.

In Testimony Whereof, the Public Service Commission of the Commonwealth of Pennsylvania has caused these presents to be signed and sealed, and duly attested by its Secretary, at its office in the city of Harrisburg, this ninth day of March, 1926.

The Public Service Commission of the Commonwealth of Pennsylvania, (Signed) S. Ray Shelby, Acting Chairman.

Attest: (Signed) Jno. G. Hopwood, Secretary. (Seal.)

[fol. 119] THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

Application Docket No. 13917—1925

In re Application of NORTH PENN POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for the Approval of Sale of the Property and Franchises of the Former to the Latter Company

REPORT AND ORDER

By the COMMISSION:

This case being before the Commission upon petition of North Penn Power Company and Northern Pennsylvania Power Company, dated November 30, 1925, for the approval of sale of the property and franchises of the former to the latter company, as more fully described in the deed;

and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, the Commission finds and determines that the granting of said petition is necessary and proper for the service, accommodation, convenience and safety of the [fol. 120] public, and that a certificate of Public Convenience be issued evidencing the Commission's approval thereof; Provided, that nothing in this proceeding which fixes or tends to fix the value of the property of either the vendor or vendee companies or the manner in which the vendee company records the transaction on its books of account shall be binding upon the Commission in any future proceeding requiring a determination by it of the fair value of the property and franchises of either of the companies

Now, to-wit, March 9, 1926, It is Ordered: That a Certificate of Public Convenience be issued evidencing the Commission's approval of the said sale in accordance with the deed.

The Public Service Commission of the Commonwealth of Pennsylvania, (Signed) S. Ray Shelby, Acting Chairman.

Attest: (Signed) Jno. G. Hopwood, Secretary. (Seal.)

[fol. 121] BEFORE THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

Application, Docket No. 1925

In re Application of NORTH PENN POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for a Certificate of Public Convenience Evidencing the Commission's Approval of the Sale of the Franchises and Property of the Former to the Latter Company

To the Public Service Commission of the Commonwealth of Pennsylvania:

The petition of North Penn Power Company and Northern Pennsylvania Power Company respectfully represents:

1. The names and addresses of your petitioners are as follows: North Penn Power Company, Borough of Blossburg, Tioga County, Pennsylvania; Northern Pennsylvania Power Company, 207 Main Street, Borough of Towanda, Bradford County, Pennsylvania.

2. The name and address of your petitioners' attorney are: Hedley V. Cooke, 31 Nassau Street, New York City.

3. Except as otherwise stated, each of the corporations hereinafter named was duly organized for the purpose of [fol. 122] supplying light, heat and power by means of electricity to the public in the borough, town, city or district in the Commonwealth of Pennsylvania in the particular case mentioned, and to such persons, partnerships and corporations residing therein or adjacent thereto as might desire the same, under the Act of April 29, 1874, P. L. 75 as amended by the Act of May 8, 1889, P. L. 136 and the amendments and supplements thereto and received letters patent granting to it perpetual existence, the articles of association having been in each case duly recorded in the proper county.

4. Your petitioner North Penn Power Company was duly organized under the Act of May 3, 1909, P. L. 408 and the amendments thereof and supplements thereto by merger and consolidation under agreement dated January 16, 1923 of the following corporations:

(1) The Blossburg Electric Light & Power Company (hereinafter called No. 2).

(2) The Mansfield Electric Company, which received letters patent dated October 14, 1897, for the Borough of Mansfield, Tioga County.

(3) Morris Run Electric Company, which received letters patent dated May 11, 1922, for the Township of Hamilton, Tioga County.

(4) Elkland Intertownship Electric Company, which re- [fol. 123] ceived letters patent dated January 15, 1923, for the Township of Elkland, Tioga County.

(5) Nelson Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Nelson, Tioga County.

(6) Lawrence Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Lawrence, Tioga County.

(7) Sullivan Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Sullivan, Tioga County.

(8) Osceola Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Osceola, Tioga County.

(9) Lawrenceville Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Lawrenceville, Tioga County.

(10) Richmond Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Richmond, Tioga County.

(11) Westfield Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Westfield, Tioga County.

[fol. 124] (12) Tioga Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Tioga, Tioga County.

(13) Elkland Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Elkland, Tioga County.

(14) Bloss Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Bloss, Tioga County.

(15) Duncan Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Duncan, Tioga County.

(16) Westfield Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Westfield, Tioga County.

(17) Knoxville Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Knoxville, Tioga County.

(18) Deerfield Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Deerfield, Tioga County.

(19) Tioga Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Town-
[fol. 125] ship of Tioga, Tioga County.

(20) Ward Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Ward, Tioga County.

The Blossburg Electric Light & Power Company No. 2 was duly organized under the Act of May 3, 1909, P. L. 408 and the amendments thereof and supplements thereto by merger and consolidation under agreement dated December 18, 1913 of:

(1) The Blossburg Electric Light & Power Company (No. 1) which received letters patent for the Borough of Blossburg, Tioga County, on December 6, 1897;

(2) The Covington Electric Light Company, which received letters patent for the Township of Covington, Tioga County, on November 24, 1913;

(3) Covington Township Electric Light Company, which received letters patent for the Borough of Covington, Tioga County (now Township of Putnam) on November 24, 1913;

all of which constituent companies last above mentioned had, in addition to their electric powers, the right to furnish

heat by means of steam necessarily generated at their electric plants.

[fol. 126] Your petitioner North Penn Power Company heretofore acquired by purchase under the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876, P. L. 30, the franchises and all of the property real, personal and mixed of the following corporations:

(1) The Canton Illuminating Company, which received letters patent dated April 6, 1899, for the Borough of Canton, County of Bradford. Deed dated September 29, 1923, approved by your Honorable Commission at Application Docket 9356 of 1923.

(2) Troy Electric Light, Heat & Power Company, which received letters patent dated December 27, 1904 for the Borough of Troy, County of Bradford. Deed dated September 27, 1923, approved by your Honorable Commission at Application Docket No. 9355/1923.

(3) Galeton Electric Company, which received letters patent dated October 13, 1922 for the Borough of Galeton, County of Potter. Deed dated November 8, 1923, approved by your Honorable Commission at Application Docket No. 9729/1923.

(4) Union North Penn Power Company, which received letters patent on November 11, 1923, for the Township of Union County of Tioga. Deed dated October 30, 1923, approved by your Honorable Commission at Application Docket No. 9536/1923.

[fol. 127] (5) Canton North Penn Power Company which received letters patent on September 11, 1923, for the Township of Canton, County of Bradford. Deed without date, approved by your Honorable Commission at Application Docket No. 9534/1923.

(6) Armenia North Penn Power Company which received letters patent on September 12, 1923 for the Township of Armenia, County of Bradford. Deed dated October 30, 1923, approved by your Honorable Commission at Application Docket No. 9535/1923.

(7) Columbia Township Bradford Electric Company, which received letters patent on October 9, 1923 for the Town-

ship of Columbia, Bradford County. Deed dated August 27, 1925, approved by your Honorable Commission at Application Docket 13708 of 1925.

(8) Alba North Penn Power Company, which received letters patent on January 14, 1924 for the Township of Alba, Bradford County. Deed dated August 22, 1925, approved by your Honorable Commission at Application Docket No. 13706/1925.

(9) Troy Township Bradford Electric Company which received letters patent on October 9, 1923 for Troy Township, Bradford County. Deed dated August 27, 1925, approved by your Honorable Commission at Application Docket No. 13707/1925.

Your petitioner North Penn Power Company has an authorized capital stock of (a) 20,000 shares of Series A 7% [fol. 128] Cumulative Preferred stock of a par value of $50 each of which 2,538 shares were outstanding on October 31, 1925; (b) 1,200 shares of Series B 6% Non-cumulative Preferred stock of a par value of $50 each of which 851 shares were outstanding in the hands of the public and 15 shares were in the company's treasury on October 31, 1925; (c) 12,000 shares of Common stock all of which were on October 31, 1925 and now are outstanding.

Your said petitioner has an authorized indebtedness of $2,000,000, against which there was outstanding on October 31, 1925, an actual funded debt consisting of $562,000 principal amount of Thirty year 6% Sinking Fund Gold Bonds secured by First Mortgage to Harrisburg Trust Company as Trustee, dated February 1, 1923, of which $9,300 principal amount were in the company's treasury.

5. Your petitioner, Northern Pennsylvania Power Company, was duly organized under the provisions of the Act of May 3, 1909, P. L. 408 and the amendments thereof and supplements thereto by merger and consolidation under the name Towanda Gas & Electric Company, pursuant to agreement dated July 1, 1920, of Towanda Gas & Water Company and Towanda Electric Illuminating Company, which merger your Honorable Commission approved by the issuance of a certificate of public convenience at Application Docket No. 4203 of 1920. Thereafter your said petitioner by proceedings duly had pursuant to the statute in such case

made and provided, changed its name to Northern Pennsylvania Power Company.

[fol. 129] Said Towanda Gas & Water Company was incorporated by special Act of Assembly of the Commonwealth of Pennsylvania, approved April 13, 1859 being Act No. 711, Laws of 1859, which granted to said company "exclusive authority to supply with gas light or water the Borough of Towanda and its vicinity in the County of Bradford and such persons, partnerships and corporations, residing therein as may desire the same • • •."

Said Towanda Electric Illuminating Company was incorporated on December 27, 1889, and received letters patent for the Borough of Towanda, Bradford County.

Your petitioner Northern Pennsylvania Power Company heretofore acquired by purchase under the provisions of Section 23 of the General Corporation Act of 1874 as amended by Section 5 of the Act of April 17, 1876, P. L. 30, the franchises and all of the property real, personal and mixed, of the following corporations, and received deeds therefor dated August 20, 1925, which were approved by your Honorable Commission at Application Docket Nos. 13607 to 13626, both inclusive of 1925, and were duly recorded in Bradford County, Pennsylvania:

(1) Monroeton Electric Company, which received letters patent dated July 12, 1921, for the Borough of Monroe, Bradford County.

(2) South Towanda Electric Company, which received letters patent dated July 12, 1921, for the Township of Towanda, Bradford County.

[fol. 130] (3) North Towanda Electric Company, which received letters patent dated July 12, 1921, for the Township of North Towanda, Bradford County.

(4) West Burlington Township Electric Company, which received letters patent dated September 11, 1923, for the Township of West Burlington, Bradford County.

(5) Ulster Township Electric Company, which received letters patent dated September 19, 1923, for the Township of Ulster, Bradford County.

(6) Rome Borough Electric Company, which received letters patent dated September 11, 1923, for the Borough of Rome, Bradford County.

(7) Granville Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Granville, Bradford County.

(8) Wysox Electric Company, which received letters patent dated July 12, 1921, for the Township of Wysox, Bradford County.

(9) Burlington Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Burlington, Bradford County.

(10) Orwell Township Electric Company, which received [fol. 131] letters patent dated September 15, 1923, for the Township of Orwell, Bradford County.

(11) Sheshequin Township Electric Company, which received letters patent dated September 19, 1923, for a portion of the Township of Sheshequin, Bradford County.

(12) Herrick Township Electric Company which received letters patent dated September 11, 1923, for the Township of Herrick, Bradford County.

(13) Franklin Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Franklin, Bradford County.

(14) Powell Electric Company, which received letters patent dated July 12, 1921, for the Township of Monroe, Bradford County.

(15) Asylum Township Electric Company, which received letters patent dated January 23, 1924, for the Township of Asylum, Bradford County.

(16) Burlington Borough Electric Company, which received letters patent dated September 11, 1923, for the Borough of Burlington, Bradford County.

(17) Rome Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Rome, Bradford County.

[fol. 132] (18) Smithfield Township Electric Company, which received letters patent dated September 19, 1923, for a portion of the township of Smithfield, Bradford County.

(19) Leroy Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Leroy, Bradford County.

(20) Standing Stone Township Electric Company, which received letters patent dated January 23, 1924, for the Township of Standing Stone, Bradford County.

Your petitioner Northern Pennsylvania Power Company has an authorized capital stock of 2,500 shares of 6% Cumulative Preferred Stock, having a par value of $50 each, of which 2,089 shares were outstanding in the hands of the public and 148 shares were in the company's treasury on October 31, 1925; 50,000 shares of $7 Cumulative Preferred stock without nominal or par value, no part of which has been issued; 50,000 shares of $6 Cumulative Preferred stock without nominal or par value, no part of which has been issued; and 100,000 shares of common stock without nominal or par value, of which 2,160 shares were outstanding in the hands of the public on October 31, 1925.

Your petitioner Northern Pennsylvania Power Company has an authorized indebtedness of $10,000,000, against which there was outstanding on October 31, 1925, an actual funded debt consisting of $50,000 principal amount of General First and Refunding 6% Gold Bonds of Towanda Gas & Electric [fol. 133] Company secured by mortgage to The Scranton Trust Company as Trustee dated October 1, 1921, of which $1,000 principal amount were in the company's treasury; and $1,000 principal amount of 5% First Mortgage Bonds of Towanda Electric Illuminating Company secured by mortgage to R. F. Page, Trustee, dated April 1, 1913.

6. General balance sheets of your petitioners as of October 31, 1925, and a statement of income and expenses showing the results of the operations of your said petitioners during the year ending on October 31, 1925, are hereto attached. marked Exhibits "A", "B", "C" and "D".

7. A contract has been entered into under the provisions of Section 23 of the General Corporation Act of 1874 as amended by Section 5 of the Act of April 17, 1876, P. L. 30, for the sale by your petitioner North Penn Power Company to your petitioner Northen Pennsylvania Power Company of all of its franchises and property, real, personal and mixed, subject to all its debts, liabilities and duties. The consideration named in said contract is to be paid to the selling company for its stockholders and is as follows:

$50 and accrued dividends in cash for each share of Series A 7% Cumulative Preferred stock of the selling

company with the privilege of taking in lieu thereof one-half of a share of the $7 Cumulative Preferred stock of the purchasing company, with apportionment of dividends thereon.

[fol. 134] $55 in cash for each share of Non-Cumulative Preferred stock, Series B, of the selling company with the privilege of taking in lieu thereof one-half of a share of the $7 Cumulative Preferred stock of the purchasing company with apportionment of dividends thereon.

9121 shares of the Common stock of the purchasing company for all of the Common stock of the selling company, all the holders of the latter having consented thereto.

Said contract consists of resolutions of the respective Boards of Directors of your petitioners, copies whereof marked Exhibits "E" and "F" are hereto attached. The said contract has been duly approved and ratified by the stockholders of your petitioner, North Penn Power Company as more fully appears by the election return relative thereto heretofore duly filed in the office of the Secretary of the Commonwealth of Pennsylvania.

8. Said sale is desired by the parties hereto because the same interests own the entire common stocks of your petitioners and their respective systems being in the same general locality, it is believed that by interconnecting and operating them under one management, economies can be effected which will at once result in bettering the service and benefitting the consuming public.

9. It is expected that the proposed transaction will materially improve the service now rendered by the parties hereto. The consolidation should result in added financial strength and in the assurance of adequate sources of supply of electric energy which are not always accessible to a small isolated company.

[fol. 135] 10. The price of the franchises and property to be purchased as aforesaid will, so far as the same is payable in cash, be paid by your petitioner Northern Pennsylvania Power Company out of the sale of its bonds and/or stock.

11. The proposed transaction will grant no franchise rights to the purchaser to furnish service in any locality where similar service is being rendered by a public service company other than the selling company or, so far as your

petitioners are informed and believe, where any such other company has charter rights to furnish service.

12. The proposed sale is necessary and proper for the service, accommodation and convenience of the public for the reasons stated in paragraphs 7 and 8 hereof.

Wherefore, your petitioners pray your Honorable Commission to issue a certificate of public convenience under the provisions of Article III., Section 3(c) and Article V., Sections 18 and 19 of the Public Service Company Law, evidencing its approval of the purchase by your petitioner, Northern Pennsylvania Power Company, of all of the franchises and property of your petitioner, North Penn Power Company, and they will ever pray, etc.

North Penn Power Company, by Lucien H. Tyng, Vice-President. Northern Pennsylvania Power Company, by Lucien H. Tyng, Vice-President.

[fol. 136] EXHIBIT "E" TO PETITION

Resolutions of Board of Directors of North Penn Power Company

Whereas, Northen Pennsylvania Power Company, a Pennsylvania corporation engaged in the same line of business as this company, has offered to purchase the franchises and all the property, real, personal and mixed, of this company, subject to all its debts, liabilities and duties for a consideration payable to this company for its stock holders in cash and/or the capital stock of the purchasing company as follows, to wit:

For each share of Series A 7% Cumulative Preferred Capital Stock of this company issued and outstanding there shall be paid to this company for the holder's account $50 in cash, plus the amount of all accumulated and accrued and unpaid dividends (being the amount to which said stock is by the terms of its issuance entitled upon dissolution of the company or liquidation or sale of its assets); with the privilege of returning such cash payment of $50 to Northern Pennsylvania Power Company at any time within six months from date of its receipt by this company and receiving in lieu thereof one-half of a share of the $7 Cumulative Preferred Stock of Northern Pennsylvania Power Company

when, as and if authorized by the stockholders thereof, accrued dividends on such stock to be adjusted as of the date of the exchange.

For each share of Non-Cumulative Preferred Capital Stock Series B of this company issued and outstanding there [fol. 137] shall be paid to this company for the holders' account $55 in cash (being the amount to which said stock is by the terms of its issuance entitled in the event of dissolution or liquidation of its assets); with the privilege of returning such cash payment to Northern Pennsylvania Power Company at any time within six months from date of its receipt by this company and receiving in lieu thereof one half of a share of the $7 Cumulative Preferred Stock of Northern Pennsylvania Power Company when, as and if authorized by the stockholders thereof, accrued dividends on such stock to be adjusted as of the date of the exchange.

For all of the issued and outstanding shares of common capital stock of this company, to wit: 12,000 shares without nominal or par value, there shall be issued and delivered to this company for account of the holders of said common stock pro rata, 9121 shares of the common stock of Northern Pennsylvania Power Company without nominal or par value, when, as and if authorized by the stockholders thereof; and

Whereas, it seems desirable to this Board to sell the said franchises and property on the said terms,

Resolved, that the aforesaid offer of Northern Pennsylvania Power Company be and the same hereby is accepted.

Further Resolved, that, the stockholders of this company consenting, the President or Vice President and Secretary or an Assistant Secretary be and they are hereby authorized and directed, upon the payment and delivery to this com- [fol. 138] pany of the aforesaid consideration, to make, execute and deliver a deed of the franchises, and all the property, real, personal and mixed, of the company to Northern Pennsylvania Power Company, its successors and assigns, as the act and deed of this company.

Further Resolved, that a meeting of the stockholders be called to convene at the office of the Company in Blossburg, Pennsylvania, on the 18th day of November, 1925, at 11 o'clock A. M., to take action on approval or disapproval of the proposed sale, assignment, disposition and conveyance of its franchises and all its property, real, personal and mixed, to Northern Pennsylvania Power Company.

Exhibit "F" to Petition

Resolutions of Board of Directors of Northern Pennsylvania Power Company

Whereas, in the judgment of this Board it is desirable that this company should acquire the franchises and all the property, real, personal and mixed, of North Penn Power Company, a Pennsylvania corporation, and the same are of a value at least equal to the proposed consideration hereinafter mentioned,

Resolved, that this company hereby offers to purchase said franchises and all the property, real, personal and mixed, of said North Penn Power Company, subject to all its debts, liabilities and duties for a consideration payable [fol. 139] to said company for its stockholders in cash and/or stock of this company as follows:

For each share of Series A 7% Cumulative Preferred Capital Stock of said North Penn Power Company issued and outstanding there shall be paid to said company for the holder's account $50 in cash, plus the amount of all accumulated and accrued and unpaid dividends (being the amount to which said stock is by the terms of its issuance entitled upon dissolution of the company or liquidation or sale of its assets); with the privilege of returning such cash payment to this company at any time within six months from date of its receipt by said North Penn Power Company and receiving in lieu thereof one-half of a share of the $7 Cumulative Preferred Stock of this company when, as and if authorized by the stockholders thereof, accrued dividends on such stock to be adjusted as of the date of the exchange.

For each share of Non-Cumulative Preferred Capital Stock Series B of said North Penn Power Company issued and outstanding there shall be paid to said company for the holder's account $55 in cash (being the amount to which said stock is by the terms of its issuance entitled in the event of dissolution or liquidation of its assets); with the privilege of returning such cash payment to this company at any time within six months from date of its receipt by said North Penn Power Company and receiving in lieu thereof one-half of a share of the $7 Cumulative preferred stock of this company when, as and if authorized by the stockholders thereof, accrued dividends on such stock to be adjusted as of the date of the exchange.

[fol. 140] For all of the issued and outstanding shares of common capital stock of said North Penn Power Company, to wit: 12,000 shares, without nominal or par value, there shall be issued and delivered to said company for account of the holders of said common stock pro rata, 9121 shares of the common stock of this company without nominal or par value, when, as and if authorized by the stockholders thereof.

STATE OF NEW YORK,
County of New York, ss:

On this 25th day of November, 1925, before me, the subscriber, a notary public in and for the County of Queens, State of New York, and duly authorized to act as such in the County of New York, said State, personally appeared L. H. Tyng, who, being duly sworn according to law, deposes and says that he is a Vice-President of North Penn Power Company, one of the petitioners named in the foregoing petition and, as such, charged with the duty of the verification of the statements contained therein, and that the said statements and the exhibits attached thereto and made a part thereof, are true and correct.

Lucien H. Tyng.

Subscribed and sworn to before me the day aforesaid. William J. White, Notary Public, Queens County. Queens County Clerk's No. 3905. Certificate filed in New York County. Clerk's No. 97, Register's No. 7170. Commission expires March 30th, 1927. (Seal.)

[fol. 141] STATE OF NEW YORK,
County of New York, ss:

On this 25th day of November, 1925, before me, the subscriber, a notary public in and for the County of Queens, State of New York, and duly authorized to act as such in the County of New York, said State, personally appeared L. H. Tyng, who, being duly sworn according to law, deposes and says that he is a Vice-President of Northern Pennsylvania Power Company, one of the petitioners named in the foregoing petition and, as such, charged with the duty of the verification of the statements contained therein, and

that the said statements and the exhibits attached thereto and made a part thereof, are true and correct.

Lucien H. Tyng.

Subscribed and sworn to before me the day aforesaid. William J. White, Notary Public Queens County. Queens County Clerk's No. 3905. Certificate filed in New York County. Clerk's No. 97, Register's No. 7170. Commission expires March 30th, 1927. (Seal.)

[fol. 142] PUBLIC SERVICE COMMISSION, COMMONWEALTH OF PENNSYLVANIA

In re Application of NORTH PENN POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for a Certificate of Public Convenience Evidencing the Commission's Approval of the Sale of the Franchises and Property of the Former to the Latter Company

Petition

Cooke & Marvin, 31 Nassau Street, New York

EXHIBIT "B" TO STIPULATION OF FACTS

First Mortgage Five Per Cent Gold Bonds

THE NEW JERSEY POWER & LIGHT COMPANY

to

GUARANTY TRUST COMPANY OF NEW YORK, as Trustee

First Mortgage

Dated February 1, 1916

This Indenture of Mortgage, made and entered into this first day of February, in the year one thousand nine hundred [fol. 143] and sixteen, by and between The New Jersey Power & Light Company, a corporation duly organized and existing under the laws of the State of New Jersey (hereinafter referred to as the "Company"), party of the

first part, and Guaranty Trust Company of New York, a corporation duly organized and existing under the laws of the State of New York (hereinafter referred to as the "Trustee"), party of the second part, Witnesseth:

Whereas, the Company owns and possesses the property hereinafter described, together with all franchises, rights, privileges, lands, tenements and hereditaments thereunto belonging and appertaining, and has legal authority to make and execute this mortgage upon all of its property, rights, privileges and franchises hereinafter set forth, and to issue its certain bonds as herein provided; and

Whereas, in order to provide funds for the acquisition of other property and for additions, extensions, improvements and betterments to its property, and to provide for the payment and discharge of its obligations and indebtedness, and for other corporate purposes, the Company by proper action of its stockholders and directors has duly determined to issue and dispose of from time to time its First Mortgage Five Per Cent Gold Bonds (hereinafter called "the bonds") without limit as to amount in substantially the forms and on the terms hereinafter set forth, and to secure the same by the mortgage and pledge of the [fol. 144] property and franchises hereinafter described and by the execution of this mortgage; and

Whereas, the bonds are to be issued either as coupon bonds or registered bonds and the forms of the coupon bonds and the coupons to be attached thereto and of the registered bonds and the Trustee's certificate are to be substantially as follows:

[Form of Coupon Bond]

No. —. $1,000.00.

UNITED STATES OF AMERICA

STATE OF NEW JERSEY

THE NEW JERSEY POWER & LIGHT COMPANY

First Mortgage Five Per Cent Gold Bond

The New Jersey Power & Light Company, a corporation organized under the laws of the State of New Jersey (hereinafter called the "Company"), for value received, promises to pay on the first day of February, in the year one thousand nine hundred and thirty-six (unless before that

time this bond shall have been redeemed in accordance with the provisions hereof) to the bearer, or in case this bond be registered, to the registered holder thereof One thousand (1,000) Dollars in gold coin of the United States of America of the present standard of weight and fineness, or its equivalent, and to pay interest thereon, until said [fol. 145] principal sum has been fully paid, at the rate of five (5) per cent. per annum, in like gold coin, semi-annually on the first days of February and August in each year, on presentation and surrender of the interest coupons hereto annexed as they respectively become due. Both the principal and interest of this bond are payable at the office or agency of the Company in the Borough of Manhattan in the City of New York, State of New York, and without deduction for any tax, assessment or governmental charge (except the federal income tax imposed by the Act of Congress approved October 3, 1913), which the Company or the Trustee under the mortgage hereinafter mentioned may be required to pay thereon or to retain therefrom under any present or future law or ordinance of the United States of America or any state, territory, county, municipality or other taxing authority therein.

This bond is one of an issue of bonds, the payment of which with interest as aforesaid is equally secured without preference, priority or distinction as to lien or otherwise of one bond over another, by a mortgage dated February first, one thousand nine hundred and sixteen, executed by the Company to Guaranty Trust Company of New York, as Trustee, to which mortgage reference is hereby made for a statement of the nature and extent of the security and the terms and conditions upon which the bonds are issued and held.

No recourse shall be had against any stockholder, director or officer of the Company for the payment of this bond or the interest thereon, all such recourse being by the [fol. 146] acceptance hereof expressly waived as in said mortgage provided.

The principal of this bond may be declared or become due and payable in the manner and with the effect provided in said mortgage in case of the happening of an event of default as therein provided.

The Company will establish and maintain two separate funds, one to be known as the Sinking and Improvement

Fund and the other as the Maintenance and Depreciation Fund, as set forth in said mortgage.

All or any of the bonds issued under the above mentioned mortgage are subject to redemption at one hundred and five (105) per cent. of their principal amount, and accrued interest on any interest day in the manner provided in said mortgage.

This bond shall pass by delivery unless registered in the name of the owner on the books of the Company at its office or agency in the Borough of Manhattan, City of New York, such registration being noted on the bond. After such registration no transfer shall be valid unless made on such books by the registered owner in person or by his attorney duly authorized and similarly noted on the bond, but the same may be discharged from registration by being in like manner transferred to bearer and thereupon transferability by delivery shall be restored, but this bond may again from time to time be registered or transferred to bearer as before; such registration, however, shall not affect the negotiability of the coupons which shall continue to be transferable by delivery.

Coupon bonds may, as provided in said mortgage, be [fol. 147] exchanged for registered bonds of the denomination of One thousand (1,000) Dollars, or any multiple thereof, upon the surrender of such coupon bonds, together with all unmatured coupons thereto belonging to an aggregate principal amount equal to the principal amount of registered bonds to be received in exchange. Each registered bond issued in lieu of or in exchange for a coupon bond or bonds shall have endorsed thereon the number or numbers of the coupon bond or bonds in lieu of or in exchange for which such registered bond is issued, and such registered bonds, as provided in said mortgage, may in turn be exchanged for coupon bonds, but in either case only upon payment, if the Company shall require it, of the transfer charges therein provided for.

This bond shall not be binding upon the Company unless the certificate endorsed hereon has been signed by the Trustee under said mortgage.

In Witness Whereof, The New Jersey Power & Light Company has caused this bond to be signed by its President or Vice-President and its incorporate seal to be hereunto affixed and attested by its Secretary or Assistant

Secretary, and has caused the coupons hereto annexed to be authenticated by the facsimile signature of the Treasurer, this first day of February, in the year one thousand nine hundred and sixteen.

The New Jersey Power & Light Company, by ——, President.

Attest: ——, Secretary.

[fol. 148]

Article Second

Issue of Bonds

Section 1. Bonds of the aggregate principal amount of Five hundred and fifty thousand (550,000) Dollars shall forthwith upon the execution hereof be certified by the Trustee and delivered to or upon the written order of the President or a Vice-President of the Company.

Section 2. After the certification and delivery of the bonds referred to in Section 1 of this Article, additional bonds shall be certified by the Trustee and delivered to the Company from time to time for the following purposes:

(a) The payment of absolute money liabilities incurred or the reimbursement of moneys actually expended by the Company since February 1, 1916, for or to aid in the acquisition by the Company of any additional electric light and power, gas or other public utility plant or system.

(b) The payment of absolute money liabilities incurred or the reimbursement of moneys actually expended by the Company since February 1, 1916, for the construction or acquisition of additions, extensions, improvements and betterments of or to any of the properties now owned by the Company, or of or to any public utility plant or system hereafter acquired by the Company upon which this mortgage shall at the time be a first lien.

Section 3. Bonds issued under Section 2 of this Article shall be certified and delivered at the following rates:

[fol. 149] (a) For the acquisition of any property referred to in the subdivision (a) of said Section 2, bonds may be certified and delivered at the rate of Eight hundred (800) Dollars face amount of bonds for every One thousand (1,000) Dollars of expenditures made or liabilities incurred for such purpose, as stated in the certificate hereinafter provided for under Section 5 of this Article; but

if such expenditures or liabilities exceed the replacement value of such property as set forth in the engineer's report hereinafter provided for in Section 5 of this Article, then only at the rate of Eight hundred (800) Dollars face amount of bonds for every One thousand (1,000) Dollars of such replacement value.

(b) For the construction or acquisition of additions, extensions, improvements and betterments of or to the property of the Company, or of or to any public utility plant or system hereafter acquired by the Company under subdivision (b) of Section 2 of this Article upon which this mortgage is a first lien, bonds may be certified and delivered at the rate of Eight hundred (800) Dollars face amount of bonds for every One thousand (1,000) Dollars of expenditures and liabilities incurred for such purposes, as stated in the certificate hereinafter provided for in Section 5 of this Article.

Section 4. The Company at any time and from time to time, in lieu of obtaining the certification and delivery of bonds for the payment or reimbursement of particular liabilities or expenditures of the character mentioned in said Section 2 of this Article, may sell for cash any of [fol. 150] the bonds, and upon the delivery to the Trustee of the resolution and certificate hereinafter referred to, and the cash representing the proceeds of the sale of such bonds, the Trustee shall certify and deliver to or upon the order of the Company, bonds to the aggregate principal amount called for by said resolution. The resolution and certificate shall be as follows:

(a) A certified copy of a resolution of the Board of Directors of the Company calling for the certification and delivery of a specified principal amount of bonds to be certified and delivered under the provisions of this Section 4, and setting forth that the amount of bonds so requested to be certified and delivered have been sold at a specified net price;

(b) A certificate signed by the President or Vice-President, and the Treasurer or Assistant Treasurer, of the Company, certifying to the truth and accuracy of the recitals contained in said resolution;

provided, however, that no bonds shall be delivered under this Section 4 to an amount which will cause the total pro-

ceeds from the sale of bonds at the time held by the Trustee under this Section 4 to be at any time in excess of Five hundred thousand (500,000) Dollars.

The moneys so deposited with the Trustee are herein referred to as "deposited moneys" and shall at all times be subject to the lien hereof until paid out as hereafter provided.

Such deposited moneys shall be paid out as follows: The [fol. 151] proceeds of each Eight hundred (800) Dollars face amount of bonds so sold shall be paid to the Company, at its option, in lieu of the certification and delivery of each Eight hundred (800) Dollars face amount of bonds which might otherwise be certified and delivered under the terms hereof. If at any time the then deposited moneys shall have been derived from sales of bonds at different prices, all of the bonds from which said deposited moneys shall have been derived shall for the purposes of this Section be deemed to have been sold at the average price per bond realized by all such sales.

Section 5. Prior to the certification and delivery of bonds under Section 2 of this Article or the payment of deposited moneys under Section 4 of this Article, there shall be delivered to the Trustee, in every case:

First. A certified copy of a resolution of the Board of Directors of the Company calling for the certification and delivery of a specified amount of bonds or for the payment of a specified amount of deposited moneys for one or more of the purposes specified in clause (a) or clause (b) of Section 2 of this Article, and, unless required for the reimbursement of the Company in respect of previous expenditures, directing the officers of the Company to set aside such specified amount of bonds or their proceeds or such specified amount of deposited moneys (as the case may be) separate and apart from all other assets and funds of the Company and to use the same only for the particular purpose specified in such resolution.

[fol. 152] Second. A report signed by the President or a Vice-President and Treasurer or an Assistant Treasurer of the Company, showing that the net earnings of the Company for any period of twelve months ending not more than two months before the first day of the then current month have been at least twice the sum of (a) the annual

interest on all bonds secured hereby outstanding at the time of such report; (b) the annual interest on all bonds secured hereby which shall not have been certified and delivered but the certification and delivery whereof has previously been called for, and (c) the annual interest on all bonds secured hereby for the certification and delivery whereof application shall then be made; provided, however, that said report shall not be required prior to or as a condition of the certification and delivery of the first One hundred and fifty thousand (150,000) Dollars face amount of bonds certified and delivered after certification and delivery of the bonds mentioned in Section 1 of this Article.

The net earnings of the Company for the purpose of such report shall consist of the gross earnings of the Company derived from property owned by the Company subject to the lien of this mortgage (not including, however, any property hereafter acquired by the Company and which at the time of such report shall be subject to a lien prior to the lien of this mortgage), less all operating expenses, including as part of such expenses taxes of every kind, insurance and adequate expenditures for repairs and maintenance.

In the event that application for the certification and delivery of bonds or the payment of deposited moneys is made [fol. 153] for the purpose of acquiring new property having earnings, the net earnings of such property, calculated in the manner aforesaid, for the period of twelve months covered by said report shall be treated as a part of the net earnings of the Company for such period.

Third. A certificate signed by the President or a Vice-President and by the Treasurer or an Assistant Treasurer of the Company, stating (a) that specified amounts of money have been actually expended since February 1, 1916, or that absolute money liabilities to a stated amount have been actually incurred since February 1, 1916, or both, by the Company for one or more of the purposes specified in clause (a) or clause (b) of Section 2 of this Article, briefly describing the particular additions, extensions, improvements and betterments to the properties of the Company or the additional properties, plants or systems acquired or contracted for by it and specifying the amount of money actually expended and the money liabilities actually incurred for each of such purposes; (b) that the

amounts of money actually expended or the liabilities actually incurred for such additions, extensions, improvements and betterments to the property of the Company, or for such additional properties, plants or systems, were not in excess of the fair value of the work done or contracted for or the property acquired or contracted for, and that none of such expenditures or liabilities was included in any previous certificate furnished under this section or was made or reimbursed or provided for out of any bonds delivered or any moneys paid to or upon the order of the [fol. 154] Company under any provision of this mortgage, or out of the Sinking and Improvement Fund, or out of the Maintenance and Depreciation Fund, hereafter referred to in this mortgage, or out of any insurance money received by reason of any loss by fire to any property of the Company, or out of moneys received from the sale or condemnation of any property of the Company; that none of such expenditures was so made or liabilities was so incurred to restore any property of the Company damaged or destroyed by fire, and that the expenditures so made or liabilities so incurred have not been reported or treated, and should not be reported or treated, as expenditures for operation, renewals, replacements and ordinary maintenance; (c) that all bonds theretofore delivered and all deposited moneys theretofore paid out by the Trustee for the purpose of discharging any liability, as in this mortgage provided, have been used for the purpose of discharging such liability or that such bonds or their proceeds or such deposited moneys (as the case may be), or so much thereof as shall not have been so used, are still set aside and reserved for the purpose of discharging such liability, or that such bonds or their proceeds, or such deposited moneys (as the case may be), or so much thereof as shall not be stated to have been so used or to be so reserved, are therewith returned and delivered to the Trustee; (d) that none of the additions, extensions, improvements and betterments to the property of the Company, or any properties, plants or systems acquired or contracted for, are known or believed to be, or upon their acquisition by the Company will become, subject to any lien or charge prior [fol. 155] to the lien of this mortgage excepting any lien or liens for taxes levied against such property which are not overdue and undetermined liens or charges incident to the construction of such property.

Fou. th. Also, in case said bonds or deposited moneys are desired for any of the purposes set forth in clause (a) of Section 2 of this Article, a written report signed by an engineer appointed by the Company and approved by the Trustee, stating in substance that said engineer has examined personally or through a competent assistant such plants or systems and that the replacement value thereof is in the judgment of such engineer a specified sum. In ascertaining such replacement value such engineer shall satisfy himself in respect thereof in any manner and by any means he may deem reasonable and proper, but shall not include in such value any rights or privileges granted through ordinance or otherwise by any municipality or other public authority or any element of good will or going value attaching to any of such properties or to any business conducted in whole or in part thereby.

The term "engineer," as used in this paragraph, shall include any firm of engineers or any corporation having engineers in its employ which is engaged in the business of investigating and reporting upon public utility properties. The engineer so approved by the Trustee may be an engineer who at the time is in the employ of the Company.

Fifth. The Company covenants and agrees that it will execute or cause to be executed and delivered to the Trus-
[fol. 156] tee, in respect to any properties, plants or systems, or parts thereof, on account of the acquisition whereof the Company shall have obtained the certification and delivery of bonds or the payment of deposited moneys under this Article, any and all deeds and instruments of transfer conveying, assuring and confirming to the Trustee such properties, plants or systems, or parts thereof, necessary in the opinion of counsel approved by the Trustee (who may be counsel for the Company) to subject said properties, plants or systems, or parts thereof, to the lien of this mortgage; or, in lieu of such deeds or instruments of transfer, the Company will deliver to the Trustee the opinion of such counsel that no deeds or instruments of transfer are necessary for such purpose.

Section 6. The written orders, resolutions, opinions, reports, statements and other instruments provided for in this Article may be received by the Trustee as conclusive evidence of anything pertaining to the right to certify and deliver bonds or to pay out deposited moneys pursuant to

this Article and without further inquiry by it shall be deemed and taken to be full authority and protection to the Trustee for its certification and delivery of such bonds or the payment of such moneys under the foregoing provisions of this Article. The Trustee, however, if requested in writing by ten (10) per cent in amount of the outstanding bonds and furnished by them with indemnity satisfactory to it, before certifying and delivering any bonds or paying out deposited moneys on the faith of any certificate or re-[fol. 157] port furnished under the provisions of this Article, shall make further inquiry with regard to any statement or statements contained therein, and shall then be entitled to examine, through any agent or agents it may select, the books and records of the Company, and to make other investigation with respect to any statement contained in such certificate or report. The decision of the Trustee thereupon shall be binding and conclusive on all the parties.

Section 7. No bonds shall be certified under this Article Second, unless there shall have first been delivered to the Trustee (a) a certified copy of an order of the Board of Public Utility Commissioners of the State of New Jersey, or other analogous board or authority having jurisdiction in the premises, authorizing or consenting to the issue of the bonds which the Trustee is then requested to certify.

Article Third

Redemption and Purchase of Bonds

Section 1. All or any of the bonds may be redeemed by the Company on any interest day at one hundred and five (105) per cent of their principal amount, and accrued interest to the day of redemption. If the Company shall elect to redeem any or all of said bonds, it shall notify the Trustee, at least forty (40) days prior to the interest day on which it is proposed to redeem said bonds, of the principal amount of bonds which the Company desires to redeem, and shall on or before the redemption date deposit with the Trustee a sum sufficient to redeem said bonds with the [fol. 158] accrued interest thereon to the date of redemption.

Notice of the Company's intention to redeem said bonds shall be given by publication in a newspaper of general circulation published in the Borough of Manhattan, City

of New York, once a week for four successive calendar weeks (in each case on any day of the week) prior to the date of redemption, the first publication to be made not less than thirty nor more than forty days prior to such redemption date. Such notice shall also state that the interest on the bonds to be redeemed will cease on the next ensuing interest date and shall require such bonds to be then presented for payment and redemption at the office of the Trustee. If any of the bonds to be redeemed are registered bonds, or coupon bonds registered as to principal, a copy of said notice shall be mailed at least four (4) weeks before the date of redemption, to the registered holder at his address appearing upon the bond registry books. If the Company shall elect to redeem less than all of the bonds then outstanding, the Trustee shall draw by lot from the issue numbers of all outstanding bonds, bonds up to the principal amount of bonds which the Company so desires to redeem, using in the case of registered bonds the numbers of the reserved coupon bonds endorsed thereon.

Such notice shall specify the bonds so drawn for redemption by their issue numbers as the bonds called for redemption on said redemption date, and shall also specify in the case of registered bonds, both the numbers of such registered bonds and the issue numbers of the coupon bonds held in reserve therefor, and if the numbers of all coupon [fol. 159] bonds held in reserve against any registered bond shall not have been drawn, so that less than the principal amount of such registered bond shall be redeemable, that upon presentation of such registered bond for redemption a new bond or bonds, either coupon or registered or both, as the holder shall elect, will be issued in lieu of the unredeemed portion of the principal amount thereof.

Section 2. If on or before such redemption date the Company shall deposit with the Trustee a sum sufficient for the redemption of the bonds that shall have been called for redemption in the published notice, such bonds so called for redemption shall be considered redeemed and they shall become and be payable on and after the date of redemption specified in such notice at the office of the Trustee at one hundred and five (105) per cent of their face value, together with interest due thereon on such date. On and after the redemption date specified in such notice the Trustee shall take up and pay at the rate aforesaid, out of the

moneys which shall be so deposited by the Company, the bonds which shall have been specified in such notice as called for redemption including interest maturing on the redemption date. Such payment by the Trustee of the sum payable for principal and for premium on each coupon bond called for redemption shall be made to the bearer of such bond, unless it shall then be registered, in which case such payment shall be to the registered holder or his assigns, but in either case only upon the surrender of such bond and of all coupons for interest thereon unmatured [fol. 160] at the date of redemption specified in the published notice. The sum so due and payable on the registered bonds without coupons for principal and premium and for accrued interest, shall be paid to the registered holder of such bonds or to their assigns under a duly executed instrument of assignment, but in every case only upon surrender of the bonds. All unpaid interest instalments represented by coupons which shall have matured on or prior to the date of redemption specified in the notice shall continue to be payable to the bearers, severally and respectively. Upon surrender of a registered bond whereof a portion only of the principal amount is to be redeemed, the Company, without charge therefor, shall issue and the Trustee shall certify and deliver new coupon bonds or new registered bonds, as the holder shall elect, equal in face amount to the portion of such registered bond not so redeemed, in lieu of the unredeemed portion of the principal amount of the bond so surrendered.

From and after the redemption date when any bonds called for redemption become payable as aforesaid, the moneys deposited by the Company for the payment and redemption thereof shall be held by the Trustee upon said trust for the payment of such bonds in the manner specified, and from and after such redemption date, if such moneys shall have been so deposited, no further interest shall accrue upon any such bonds, and any coupons appertaining to such bonds for interest maturing after such date shall become and be null and void, anything in such bonds or in such coupons or in this mortgage to the contrary [fol. 161] notwithstanding, and the holders of such bonds shall be bound to look solely to the funds in the hands of the Trustee for the payment thereof. All bonds so redeemed and paid by the Trustee out of the moneys de-

posited by the Company as aforesaid shall be cancelled by such Trustee and be delivered to the Company and shall not be reissued.

Section 3. In case the entire issue of bonds shall at any time be called for redemption pursuant to the provisions of this Article, all moneys then held by the Trustee under the provisions of this mortgage shall, upon request of the Company, expressed in a resolution of its Board of Directors, a certified copy whereof shall be delivered to the Trustee, be applied by the Trustee to the redemption and payment of the bonds so called for redemption, and any such moneys in excess of the amount necessary for such redemption and payment shall be payable to the Company.

Section 4. No bonds shall be redeemed under the foregoing provisions of this Article unless the Board of Public Utility Commissioners of the State of New Jersey, or another analogous Board or authority having jurisdiction in the premises, shall have first made its order authorizing and permitting the redemption of such bonds as the Company shall then desire to make.

Section 5. Whenever there shall be any moneys in the Sinking and Improvement Fund, provided for under Article Fifth hereof, applicable to the redemption or purchase of bonds, or whenever the Company shall deposit with the [fol. 162] Trustee hereunder funds for that purpose, offers of bonds may be invited as follows: The Board of Directors of the Company shall pass a resolution setting forth its decision to purchase bonds under offers, the limit of price to be paid therefor, not exceeding however one hundred and five (105) per cent of their face value, and accrued interest, and the amount to be applied from the Sinking and Improvement Fund and/or to be otherwise provided for that purpose.

On receipt by the Trustee of a certified copy of said resolution, and the cash, if any, in addition to the amount to be withdrawn from the Sinking and Improvement Fund to be used for the purpose of purchasing bonds, the Trustee shall then invite offers of bonds in the following manner:

The Trustee shall publish a notice once a week for two successive weeks in a daily newspaper of general circulation published in the Borough of Manhattan, City of New York, the first publication to be not less than fifteen nor

more than twenty days prior to the date set for receiving offers therein specified, which notice shall state the amount of moneys then on hand which the Board of Directors of the Company have decided to apply to the purchase of bonds, and shall invite sealed offers to be made for the sale of bonds to the Company on or before the date specified in said notice.

From the bonds so offered for sale, the Trustee shall purchase on behalf of the Company at the lowest price at which the said bonds shall be offered, but at prices not to exceed [fol. 163] the limit set forth in said resolution of the Board of Directors, sufficient bonds to exhaust as far as possible the moneys so applicable to such purchase. If at any time sufficient bonds shall not be offered, in response to any such notice, to exhaust the moneys then applicable to such purchase, the moneys set aside therefor and not so used shall thereupon become part of the Sinking and Improvement Fund, and be held therein subject to further disposition as therein provided, or, at the option of the Company, may be used in the redemption of bonds as provided in this Article. Any bonds purchased under the provisions hereof shall be forthwith cancelled by the Trustee and, upon its written request, delivered to the Company and shall not be reissued.

Article Fifth

Sinking and Improvement Fund

The Company shall establish a fund, to be known as the Sinking and Improvement Fund, and for that purpose will pay to the Trustee hereunder, on the first day of February, 1920, and annually thereafter on the first day of February so long as any bonds secured by this mortgage remain outstanding, a sum in cash equivalent to one (1) per cent of the face value of all bonds issued hereunder and at that time outstanding. All money in the Sinking and Improvement Fund shall be held by the Trustee and paid out by it at the request of the Company as follows:

[fol. 164] (a) It shall be paid to the Company in the same manner and under the same restrictions and for the same purposes as set forth and specified for the payment of deposited moneys, as provided by Article Second hereof, except that such funds may be paid out at the rate of One hundred (100) Dollars of money for each One hundred (100)

Dollars of liability incurred or money expended for such purposes.

(b) It shall be paid out for the purchase or redemption of bonds, as the Company may elect, in accordance with the provisions of Article Third hereof.

Article Fifteenth

Merger

Nothing contained in this mortgage or in any bond hereby secured, shall prevent any lawful purchase by the Company of any other corporation, or any consolidation or merger of the Company with any other corporation, or any conveyance, transfer or lease, subject to the continuing lien of this mortgage, of all the property mortgaged hereunder, to any person or corporation, provided that such consolidation, merger, sale, conveyance, transfer or lease shall be upon such terms as to preserve and not to impair the lien and security of this mortgage, the rights or powers of the Trustee or of the bondholders hereunder.

[fol. 165] STATE OF NEW YORK,
County of New York, ss:

Wm. C. Cox, being duly sworn, deposes and says:

That he is a Vice-President of Guaranty Trust Company of New York, the mortgagee above named, and its duly authorized agent in its behalf. That the consideration for the above mortgage is the issue of bonds of the mortgagor for the purposes specially set forth in said mortgage, and that the principal amount due and to grow due thereon, stated as nearly as possible, is Five hundred fifty thousand Dollars ($550,000) face amount of bonds to be issued under and secured by the terms of said mortgage and forthwith to be sold, together with such additional amount of bonds as may be hereafter issued under the terms and in accordance with the provisions of the said mortgage.

(Signed) Wm. C. Cox.

Sworn to and subscribed before me this 3rd day of March, 1916. (Signed) Edwin F. Corey, Commissioner of Deeds for the State of New Jersey, Office No. 59 Wall Street, New York City. (Seal.)

[fol. 166] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket Nos. 49,079, 52,639, 52,680, 59,469, 59,470

GENERAL GAS & ELECTRIC CORPORATION, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

NEW JERSEY POWER & LIGHT COMPANY, as Successor by Merger to Newton Gas Company, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

BINGHAMTON LIGHT, HEAT & POWER COMPANY, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Francis J. Sweeney, Esq., for the Petitioners.
Chester A. Gwinn, Esq., for the Respondent.

MEMORANDUM OPINION

DISNEY:

These proceedings were duly consolidated for hearing and [fol. 167] report and involve the redetermination of deficiencies in income taxes as follows:

Petitioner	Docket No.	Year	Deficiency
General Gas & Electric Corporation	52639	1926	$90,169.05
	59469	1927	277,903.82
New Jersey Power & Light Co.	49079	1/1/26 to 12/1/26	478.70
Binghamton Light, Heat & Power Co.	52680	1926	34,826.71
	59470	1927	32,898.52

All of the facts have been stipulated.

The General Gas & Electric Company, a Delaware corporation, hereinafter referred to as the petitioner, is, and was at all times material, engaged in the business of holding securities and thus controlling public utility subsidiaries. The petitioners, with their affiliated taxpayers, filed consolidated income tax returns for 1926 and 1927. The affiliated taxpayers included the Susquehanna County Light & Power Co., formerly a Pennsylvania corporation; the North

Carolina Public Service Co., Inc., a North Carolina corporation; the North Penn Power Co., formerly a Pennsylvania corporation; the Northern Pennsylvania Power Co., a Pennsylvania corporation; and the New Jersey Power and Light Co., a New Jersey corporation.

The North Penn Power Co. in 1923 issued and sold its First Mortgage Thirty Year 6% Sinking Fund Gold Bonds due February 1, 1953, at a discount and also incurred expenses of issue and sale. The bonds were redeemable at 105 per cent of their face amount on any interest date up to February 1, 1933.

In 1926 the Northern Pennsylvania Power Co., an affili- [fol. 168] ated subsidiary of the petitioner, acquired all of the assets and assumed all of the liabilities of the North Penn Power Co., including its liability on these bonds, which constituted a prior lien on the assets taken over. The principal amount of the bonds outstanding at the time of the transfer was $552,700. Other consideration for the transfer was cash from the transferee for the retirement of the preferred stock of the transferor and common stock of the transferee, which was issued in exchange for common stock of the transferor.

Subsequently in 1926 the Northern Pennsylvania Power Co. retired $368,900 principal amount of the bonds at 105 per cent of their face value, or at a premium of $18,445, plus accrued interest to the date of retirement. In 1927 it retired the remaining bonds, $183,800 face amount, at the same price, or at a premium of $9,190.

On and after December 15, 1913, the Susquehanna County Light & Power Co. issued and sold $600,000 of its first mortgage 6 per cent gold bonds due December 15, 1943, incurring debt discount and expenses incident to the issue and sale. In 1926 the Northern Pennsylvania Power Co. acquired all of the assets and assumed all of the liabilities of the Susquehanna County Light & Power Co., including its liability on all of these bonds, which constituted a prior lien on the assets transferred. Other consideration paid for the assets was preferred and common stock of the transferee, which was exchanged for common stock of the transferor. The Susquehanna County Light & Power Co. had no outstanding preferred stock. In 1926 the Northern Pennsylvania Power [fol. 169] Co. redeemed all of the bonds at 105 per cent of their principal amount, or at a premium of $30,000, in accordance with terms of the trust indenture.

The funds for the retirement of the North Penn Power Co. and the Susquehanna County Light & Power Co. bonds were obtained from the sale in 1926 of $1,950,000 principal amount of Northern Pennsylvania Power Co. first and refunding bonds, Series A, due June 1, 1956.

The unamortized debt discount and expense incurred by the North Penn Power Co. and the Susquehanna County Light & Power Co. in connection with the issuance and sale of the bonds was transferred as a deferred charge asset on the books of the transferee.

At the time of retirement in 1926 by the Northern Pennsylvania Power Co. of $368,900 principal amount of bonds issued by the North Penn Power Co. and $600,000 principal amount of bonds of the Susquehanna County Light & Power Co., the balances of the unamortized debt discount and expense applicable thereto were $70,499.79 and $20,509.51, respectively. The debt discount of $70,499.79 on the $552,700 North Penn Power Co. bonds retired in 1926 and 1927, together with the premiums of $27,635 paid in the redemptions, was not taken as an expense on the books of the Northern Pennsylvania Power Co., but were transferred to debt discount and expense applicable to the refunding issue. Of the amount of $20,509.51 of unamortized debt discount and expense incurred in the issuance and sale of the Susquehanna County Light & Power Co. bonds, in 1926 the Northern Pennsylvania Power Co. deducted $587.40, leaving an unamortized amount of $19,922.11.

[fol. 170] The transfers of assets and liabilities of the North Penn Power Co. and the Susquehanna County Light & Power Co. to the Northern Pennsylvania Power Co. were made under the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876, P. L. 30 of the Laws of Pennsylvania, with the sanction and approval of the Public Service Commission of Pennsylvania under Section 3 (c) Article III and Sections 18 and 19, Article V of the Public Service Company Law with the issuance of a report, order and certificate of public convenience.

The Piedmont Power & Light Co., formerly a North Carolina corporation, in 1919 issued and sold its first mortgage 15 year Sinking Fund Gold 6% series bonds. In 1921 by supplemental indenture it provided for the issuance and sale of a 7 per cent series with the right to convert the 7 per cent series, at the holder's option, into the 6 per cent series

upon payment by the corporation of an 8 per cent cash premium at conversion.

In 1924 the North Carolina Public Service Co., Inc., purchased the assets and assumed the liabilities of the Piedmont Power & Light Co., including the mortgage liability under the original and supplemental indenture. In 1925 and 1926 the North Carolina Public Service Co., Inc., incurred debt discount of $6,884.50 by paying an 8 per cent cash premium for the conversion of 7 per cent bonds into 6 per cent bonds. The unamortized portion of this amount in 1926 was $6,017.66.

[fol. 171] On November 1, 1926, $183,700 of the 7 per cent bonds were retired at 105 and $184,100 of the 6 per cent bonds were retired at 103, the premiums paid being $9,185 on the former and $5,523 on the latter. In addition thereto the North Carolina Public Service Co., Inc., paid legal and advertising expenses of $2,112.50 in connection with the redemptions.

In 1924 the North Carolina Public Service Co., Inc., issued and sold its first lien and refunding gold 6½ per cent Series A bonds due February 1, 1944, callable on any interest date to and including February 1, 1929, at 107½. In 1926 it redeemed $880,000 (the whole amount outstanding) of the bonds at a premium of $66,000 pursuant to the terms of the indenture, and incurred and paid legal and advertising expenses of $1,846.79 in connection with the retirement. At the time the bonds were retired there existed unamortized debt expenses incurred in connection with the issuance and sale of said bonds in the amount of $16,157.30, of which the respondent amortized $747.79 in 1926, leaving $15,409.51 unamortized in 1926.

In 1924 the North Carolina Public Service Co., Inc., issued and sold its first lien and refunding mortgage 6 per cent gold bonds Series B, due May 1, 1954, callable on any interest date on 30 days notice up to and including November 1, 1928, at 105. In 1926 it redeemed $570,500 (the entire amount outstanding) of the bonds at 105 or at a premium of $28,525. The unamortized discount and expense at the time of the retirement was $56,176.48, of which the respondent allowed $489.52 as a deduction in 1926, leaving a balance of $55,686.96.

[fol. 172] The funds used by the North Carolina Public Service Co., Inc., for the redemption of the bonds issued by

the Piedmont Power & Light Co. and the bonds issued by it, were from the proceeds of sale of bonds up to October 1, 1926, in the principal amount of $3,125,000.

From 1916 to 1925, inclusive, the New Jersey Power & Light Co., a New Jersey corporation organized in 1915, issued and sold to the public its first mortgage 5 per cent gold bonds, due February 1, 1936, of the face amount of $2,689,000 for $2,315,635, or at a total discount of $373,365. In 1927 it retired all of the outstanding bonds, amounting to $2,087,000, at 105 in accordance with the terms of the indenture under which they were issued, thereby paying a premium of $104,350. The funds for the retirement of the bonds were obtained from the sale on December 29, 1926, of $6,000,000 principal amount of New Jersey Power & Light Co. 5 per cent first mortgage bonds due August 1, 1936. None of the bonds redeemed were held by corporations affiliated with the petitioners. At the time the bonds were redeemed the unamortized debt discount and expense incurred in connection with their issue amounted to $179,687.23, of which the respondent allowed $9,470.42 as amortization over the life of the new issue of bonds, leaving a balance of $170,216.81.

The parties to these proceedings have stipulated that there is no deficiency or overpayment of income tax in Docket No. 49,079, involving the New Jersey Power & Light Co. as successor by merger to the Newton Gas Co. and that there is a deficiency of $6,876.77 in income tax against the [fol. 173] Binghamton Light, Heat & Power Co., Docket No. 52,680, for the period January 1, 1926, to April 30, 1926. Decisions will be entered accordingly.

Appropriate agreements have been entered under which the income tax liability of each of the petitioners for the taxable years is to be paid by the General Gas & Electric Corporation, the parent corporation. The stipulations of the parties settle all of the issues raised by the pleadings except the question of whether the several amounts shown above as unamortized debt discount and expense at the time the bonds were retired, less amounts allowed by the respondent, and premiums and legal and advertising expenses incurred in connection with the redemptions, are deductible from gross income of the respective corporations which retired the securities. The question involves items relating to bonds issued in the first instance by the redeeming corporation and securities of other corporations assumed by the redeeming corporation.

Bonds of Redeeming Corporations

Under this subdivision of the issue, the following amounts are claimed as deductions from gross income of the corporations which issued and redeemed the bonds:

		Bonds	Premiums	Retirement Expense	Unamortized debt Discount & Expense
North Carolina Public Service Co., Inc.	1926	$880,000	$66,000	$1,846.79	$15,409.51
	"	570,500	28,525	.....	55,686.96
New Jersey Power & Light Co.	1927	2,087,000	104,350	.....	170,216.81

The respondent elected not to argue the question in view [fol. 174] of the holdings of this Board and the courts contrary to the position he has taken. The deductibility of the premiums and unamortized debt discount is controlled by Metropolitan Edison Co., 35 B. T. A. — (No. 143), and the cases cited therein on the first question, and the expense incurred in retiring the bonds is ruled by Coast Counties Gas & Electric Co., 33 B. T. A. 1199. Following those cases the claimed deductions are allowed.

Bonds Assumed by Redeeming Corporations

This point involves the deduction of premiums, retirement expense and unamortized debt discount and expense relating to bonds of the North Penn Power Co. and the Susquehanna County Light & Power Co. assumed and subsequently redeemed by the Northern Pennsylvania Power Co. and bonds issued by the Piedmont Power & Light Co. which were assumed and retired by the North Carolina Public Service Co., Inc., as follows:

			Bonds	Premiums	Retirement Expense	Unamortized Debt Discount and Expense
Northern Pennsylvania Power Co.:						
North Penn Co. bonds	1926		$368,900	$18,445	.....	$47,058.08
	1927		183,800	9,190	.....	23,441.71
Susquehanna Co. bonds	1926		600,000	30,000	.....	19,922.11
North Carolina Public Service Co., Inc.:						
Piedmont Co. bonds.	1926	7%	183,700	9,185)	.....	.....
		6%	184,100	5,523)	2,112.50	6,017.66

The right to deduct the premiums paid to retire the bonds is decided in favor of the petitioner on the authority of our

decision on the third issue in Metropolitan Edison Co., supra. The deductibility of the retirement expense of [fol. 175] $2,112.50 and unamortized debt discount and expense of $6,017.66 incurred in the conversion of 7% bonds into 6% bonds is also decided in favor of the petitioner on the authority of Coast Counties Gas & Electric Co., supra, and our decision on the first issue in Metropolitan Edison Co., supra.

There remains the question of whether a right exists to deduct the unamortized debt discount and expense involved in the bonds assumed by the Northern Pennsylvania Power Co. The issue turns upon the true nature of the transactions.

The transfers were made under the provisions of Section 23 of the General Corporation Act of April 29, 1874, as amended on April 17, 1876, and are classified by the petitioner as the short form of merger under the laws of Pennsylvania. In the transaction with the North Penn Power Co. sufficient cash passed to retire the preferred stock of the transferor, and common stock of the transferee was exchanged for like stock of the transferor. In the deal with the Susquehanna County Light & Power Co. the transferee exchanged its preferred and common stock for the outstanding stock (common only) of the transferor. The transactions were referred to as sales in the resolutions adopted by the boards of directors of the corporations involved and the applications filed with the Public Service Commission of Pennsylvania under the Act, and they were approved by the Public Service Commission as sales.

Facts in all material respects the same, and the identical statutes of Pennsylvania, were involved in the first point in issue V of the Metropolitan Edison Co. case and we held [fol. 176] that the transactions were, in effect, sales, not statutory mergers. On the authority of that decision the respondent is sustained on this point.

Decision will be entered under Rule 50.

Enter.

—— ——.

Entered June 3, 1937.

BEFORE UNITED STATES BOARD OF TAX APPEALS, WASHINGTON

Docket No. 59,469

GENERAL GAS & ELECTRIC CORPORATION, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DECISION

Pursuant to the Memorandum Opinion of the Board entered on June 3, 1937, the respondent herein having on August 13, 1937, filed a motion together with a proposed recomputation and the petitioner having on August 20, 1937, acquiesced therein, now, therefore, it is

[fol. 177] Ordered and Decided: That there is a deficiency in income tax for the year 1927 in the amount of $3,164.80.

Enter.

Entered, Aug. 24, 1937.

(S.) Bolon B. Turner, Member. (Seal.)

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

PETITION FOR REVIEW—Filed November 20, 1937

To the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit:

Now comes the appellant (hereinafter referred to as petitioner), the General Gas and Electric Corporation, a corporation organized and existing under the laws of the State [fol. 178] of Delaware, by its undersigned attorneys and respectfully shows:

I. Jurisdiction for Review

This is a proceeding for review by the United States Circuit Court of Appeals for the Second Circuit of the decision of the United States Board of Tax Appeals entered August 24, 1937, Docket No. 59,469, determining a deficiency in income tax of the petitioner for the year 1927.

The petitioner is a corporation duly organized and existing under the laws of Delaware, with its principal office and place of business in Wilmington, Delaware.

The respondent on review (hereinafter sometimes referred to as the Commissioner) is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States of America.

The return of the tax in respect of which the asserted liability arises was filed with the United States Collector of Internal Revenue for the Second District of New York whose office is located within the Judicial Circuit of the United States Circuit Court of Appeals for the Second Circuit.

Review of the said decision of the Board of Tax Appeals is sought by the petitioner in the United States Circuit Court of Appeals for the Second Circuit.

II. Nature of the Controversy

The respondent determined against the petitioner for the taxable periods under review deficiencies in income tax for [fol. 179] the calendar year 1926 in the amount of $90,169.05 and for the calendar year 1927 in the amount of $277,903.82 and duly sent to petitioner notice of said deficiencies. Thereafter, petitioner duly filed its petition for the redetermination of the said asserted deficiencies with the United States Board of Tax Appeals (hereinafter referred to as the "Board"). The respondent duly filed his answer to said petition and trial was had. On June 3, 1937, the Board promulgated its report and opinion, and on August 24, 1937, entered its order redetermining the deficiencies, and deciding that there was a deficiency in the amount of $24.21 for 1926 and a deficiency of $3,164.80 for 1927.

III. The Matters in Controversy

The matter for decision in this controversy is whether the petitioner is entitled to deduct in a consolidated return duly filed with the Northern Pennsylvania Power Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and other corporations, the unamortized debt discount and expense remaining after the retirement by the Northern Pennsylvania Power Company of the bonds of the North Penn Power Company and

the Susquehanna County Light and Power Company. By agreement pursuant to law, the petitioner and each of the affiliated corporations agreed that the entire tax liability of the affiliated group of corporations is to be assessed against and paid by petitioner, the General Gas and Electric Corporation.

[fol. 180] The petitioner maintains that in the consolidated returns it was entitled to the deduction with respect to said unamortized discount and expense. The respondent takes the position that the Northern Pennsylvania Power Company, a wholly owned subsidiary of the petitioner acquired the bonds of North Penn Power Company and Susquehanna County Light and Power Company by purchase and is not entitled to deduct such bond discount and expenses.

In support of this petition, it is the petitioner's position that the Northern Pennsylvania Power Company acquired the bonds through merger and assumed the obligations therefor by virtue of the operation of law pursuant to Section 23 of the General Corporation Act of Pennsylvania of April 29, 1874, as amended April 17, 1876, under what is designated herein as a short form merger.

The Board of Tax Appeals held that the bonds came into the possession and ownership of the Northern Pennsylvania Power Company by virtue of purchase, the Board apparently assuming that if they had been acquired as the result of statutory merger the petitioner would be entitled to the deductions claimed.

The North Penn Power Company in 1923 issued and sold its First Mortgage 30-Year 6% Sinking Fund Gold Bonds due February 1, 1953, at a discount and also incurred expenses of issue and sale of the bonds. In 1926 the Northern Pennsylvania Power Company, an affiliated subsidiary of the petitioner, asquired all of the assets, properties and franchises and assumed all of the liabilities of the North [fol. 181] Penn Power Company, including its liability on these bonds which constituted a prior lien on the assets taken over under, pursuant to, and by virtue of the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876, P. L. 30 of the laws of the Commonwealth of Pennsylvania, with the sanction and approval of the Public Service Commission.

In 1926 the Northern Pennsylvania Power Company retired $368,900 principal amount of said bonds and in 1927 $183,800, principal amount thereof.

The unamortized debt discount and expense with respect to the bonds retired in 1926 was $47,058.08 and with respect to those retired in 1927 the unamortized debt discount and expense was $23,441.71. These amounts petitioner claims should be allowed as a deduction to the Northern Pennsylvania Power Company and allowed as a deduction in the consolidated return.

In 1926 the Northern Pennsylvania Power Company also acquired under, pursuant to and by virtue of the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876, P. L. 30 of the laws of the Commonwealth of Pennsylvania, with the approval and sanction of the Public Service Commission, all the assets, properties and franchises, and assumed all the liabilities of the Susquehanna County Light and Power Company including the liability of the first mortgage bonds issued by the latter company which constituted a prior lien upon the assets so transferred. The Susque- [fol. 182] hanna County Light and Power Company was organized under the laws of Pennsylvania in 1913 as a public utility. On and after that date the said company issued and sold $600,000 of its first mortgage 6% gold bonds due December 15, 1943, incurring debt discount and expense incident to such issue and sale. In 1926 the Northern Pennsylvania Power Company redeemed the entire issue of the said bonds and retired the same. At the date of redemption there remained $19,922.11 unamortized debt discount and expense with respect to the issuance and sale of the bonds of the Susquehanna County Light and Power Company. Petitioner herein claims a right in the consolidated return to deduct from the gross income of the Northern Pennsylvania Power Company for 1926 the said unamortized debt discount and expense.

Petitioner's contention is that under the law of Pennsylvania the assets of the North Penn Power Company and Susquehanna County Light and Power Company were acquired and their liabilities assumed by operation of law as a result of a merger under the aforementioned statute which is commonly known as the short form merger under the laws of Pennsylvania.

IV. Findings of the Board

All of the facts in the case either being stipulated or admitted in the answer or shown in the exhibits duly filed and attached to the stipulation, the Board made no independent findings of fact, but adopted the facts there shown. The Board, however, reached the ultimate conclusion that the assets of the North Penn Power Company and the Susque- [fol. 183] hanna County Light and Power Company were acquired by the Northern Pennsylvania Power Company through purchase and sale and not as the result of a merger under the law of Pennsylvania. Based upon this ultimate finding the Board decided that the Northern Pennsylvania Power Company was not entitled to the deduction with respect to the unamortized debt discount and expense upon the retirement of the assumed bonds.

V. Assignments of Error

The petitioner says that, in the decision and order of the Board redetermining the said deficiencies, manifest error occurred and intervened to the prejudice of the petitioner and the petitioner assigns the following errors upon which it relies to reverse the said decision and order so rendered and entered by the Board, each and every assignment of error being severally and distributively applicable to the deficiency determined, decided and adjudicated against petitioner for the taxable years 1926 and 1927, viz.:

(1) The Board erred in failing to decide as a matter of law that the assets of the Susquehanna County Light and Power Company and the North Penn Power Company were acquired by the Northern Pennsylvania Power Company as a result of merger under the laws of Pennsylvania.

(2) The Board erred in holding that the petitioner was not entitled to the deduction claimed with respect to the [fol. 184] unamortized debt discount and expense with respect to bonds of the North Penn Power Company and the Susquehanna County Light and Power Company assumed by it.

(3) The Board erred in determining that there were any deficiencies due from the petitioner for the taxable periods involved.

(4) The Board erred in not determining that there were overpayments of taxes for the periods involved.

Wherefore, the petitioner prays that the decision and order of the United States Board of Tax Appeals be reversed by the United States Circuit Court of Appeals for the Second Circuit; that a transcript of the record be prepared in accordance with law and the rules of the said Circuit Court of Appeals and be submitted to the Clerk of the said Court for filing and that appropriate action be taken to the end that the decision complained of be reviewed and the errors complained of be corrected and the said decision be reversed by said Court.

Respectfully submitted, C. M. Trammell, Bradford S. Magill, Francis J. Sweeney, Attorneys for Petitioner.

[fol. 185] *Duly sworn to by Charles M. Trammell. Jurat omitted in printing.*

[fol. 186] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

[Title omitted]

NOTICE OF FILING PETITION FOR REVIEW—Filed Nov. 20, 1937

To the Chief Counsel, Bureau of Internal Revenue, United States Treasury Department:

You are hereby notified that on the 20th day of November, 1937, appellant, General Gas & Electric Corporation, did file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Second Circuit, of the decision of the Board of Tax Appeals heretofore rendered in the above entitled case. A copy of the petition for review and assignments of error, as filed, is attached hereto and served upon you.

Dated, this 20th day of November, 1937.

C. M. Trammell, Attorney for Appellant.

[fol. 187] Copy of the foregoing notice, together with copy of the petition for review has been received this 20th day of November, 1937, and service thereof is hereby accepted.

J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue.

In United States Circuit Court of Appeals for the Second Circuit

[Title omitted]

Præcipe for Record—Filed November 20, 1937

To the Clerk of the United States Board of Tax Appeals:

You will please prepare within sixty (60) days from the date of the filing of the petition for review in the above-[fol. 188] entitled proceeding, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Second Circuit copies duly certified as correct, of the following documents:

1. Docket entries of proceedings before the Board of Tax Appeals.
2. Pleadings before the Board, including copy of notice of deficiency attached to petition.
3. Stipulation of facts filed with the Board of Tax Appeals, together with exhibits attached thereto and made a part thereof.
4. Opinion and decision of the Board.
5. Petition for review and assignments of error, together with proof of service of notice of filing petition for review and assignments of error.
6. This præcipe, together with proof of service thereof.

C. M. Trammell, Attorney for Petitioner.

Service of a copy of the within præcipe is hereby admitted this — day of November, 1937.

J. P. Wenchel, Attorney for Respondent on Review.

[fol. 189] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 190] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1937

Argued May 12, 1938. Decided July 18, 1938

Nos. 221, 222

GENERAL GAS & ELECTRIC CORPORATION, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from Board of Tax Appeals

Before Manton, Swan, and Chase, Circuit Judges

Petitions by General Gas & Electric Corporation to review orders of the Board of Tax Appeals determining deficiencies in income taxes for the years 1926 and 1927.

Affirmed.

William H. S. Wells, of Philadelphia, Pa., Francis J. Sweeney and C. M. Trammell, both of Washington, D. C., and Maurice Bower Saul of Philadelphia, Pa. (Saul, Ewing, Remick & Saul, of Philadelphia, Pa., of counsel), for petitioner.

James W. Morris, Asst. Atty. Gen. (Sewall Key and Lee A. Jackson, Sp. Assts. to Atty. Gen., of counsel), for respondent.

SWAN, Circuit Judge:

Two proceedings, one involving income taxes for the year 1926, the other for 1927, and presenting a common question of law, were consolidated for hearing before the Board. The petitions for review have been similarly consolidated before this court. The petitioner, General Gas & Electric Corporation, has agreed to pay the taxes — its affiliate, Northern Pennsylvania Power Company. The issue in controversy is as to the latter's taxes for the years 1926 and 1927, and this turns on whether it is entitled to deduct the unamortized bond discount and expense of two corporations whose assets and liabilities were taken over by it and whose bonds it retired before maturity during the

years in question. The commissioner disallowed the deductions, and the Board sustained his ruling.

There is no dispute in the facts, which were stipulated. In 1923 North Penn Power Company, a Pennsylvania corporation, issued and sold its first mortgage bonds, due February 1, 1953, at a discount and incurred expense in connection with their issue and sale. In 1926 it transferred all its assets, property and franchises to Northern Pennsylvania Power Company, also a corporation of Pennsylvania, and that company assumed all the liabilities of the transferor, including liability on the aforesaid bonds which constituted a prior lien on the assets transferred. As consideration for the transfer, the transferee, in addition to assuming the transferor's liabilities, gave cash for retirement of the transferor's preferred stock, and shares of the transferee's common stock, which were exchanged for the common stock of the transferor. The transfer was made under section 23 of the Pennsylvania General Corporation Act of 1874, as amended by section 5 of the Act of April 17, 1876, 15 P. S. Pa. § 595, and it had the sanction and approval of the Public Service Commission of Pennsylvania. At the date of the transfer there were outstanding first mortgage bonds of the transferor in the principal amount of $552,700. In 1926 the transferee retired $368,900 of these bonds, and in 1927 retired the remaining $183,800 thereof. By transactions similar in all material respects Northern Pennsylvania Power Company likewise acquired the assets and assumed the liabilities of another Pennsylvania corporation, Susquehanna County Light & Power Company, which [fol. 191] had outstanding an issue of first mortgage bonds that the transferee retired in 1926. The funds for the retirement of the North Penn bonds and the Susquehanna bonds were obtained from the proceeds of the sale of $1,950,000 of First and Refunding Bonds, Series A, due June 1, 1956, of Northern Pennsylvania Power Company. The unamortized bond discount and expense incurred respectively by North Penn Power Company and Susquehanna County Light & Power Company in connection with the issuance and sale of their bonds were transferred as a deferred charge asset on the books of Northern Pennsylvania Power Company. Such discount and expense in respect to the bonds retired in 1926 and 1927, respectively, were claimed as deductions in the consolidated income tax

returns filed by the petitioner and its affiliates for those years.

It is conceded that unamortized discount and expenses incurred in connection with the issue and sale of bonds are deductions available to the issuing corporation when it pays them off prior to maturity. See Helvering v. Union Pacific R. Co., 293 U. S. 282, 55 S. Ct. 165, 79 L. Ed. 363; Great Western Power Co. v. Commissioner, 297 U. S. 543, 56 S. Ct. 576, 80 L. Ed. 853. It is also not disputed that such items are allowable deductions to a successor corporation which through merger or consolidation has carried forward the corporate identity of the issuing corporation and has succeeded by operation of law to its rights and liabilities. American Gas & Elec. Co. v. Commissioner, 2 Cir., 85 F. 2d 527; New York Central R. Co. v. Commissioner, 2 Cir., 79 F. 2d. 247, certiorari denied 296 U. S. 653, 56 S. Ct. 370, 80 L. Ed. 465; Western Maryland Ry. Co. v. Commissioner, 4 Cir., 33 F. 2d 695. When, however, the successor corporation acquires the assets of the issuing corporation by purchase, rather than by a consolidation or merger, such deductions are not available. American Gas & Elec. Co. v. Commissioner, 2 Cir., 85 F. 2d 527; American Gas & Elec. Co. v. United States, 17 F. Supp. 151, Ct. Cl.; Turner-Farber-Love Co. v. Helvering, 62 App. D. C. 369, 68 F. 2d 416. Whether the transactions at bar are to be classed as mergers or as purchases is the issue in controversy.

The solution of the problem must be sought in the law of Pennsylvania. During 1926, when the transfers under consideration were made, the Pennsylvania statutes authorized two forms of transactions by which the assets and franchises of one corporation might be taken over by another. One statute is the Act of May 3, 1909, 15 P. S. Pa. § 421 et seq., sometimes referred to as the "long form merger"; the other is section 23 of the Act of April 29, 1874, as amended by section 5 of the Act of April 17, 1876, which is sometimes called the "short form merger." See York Haven Water & Power Co. v. Public Service Comm., 287 Pa. 241, 246, 134 A. 419. The transfers by which the taxpayer acquired the assets of its transferors and assumed their liabilities were made under the Act of 1874 as amended 15 P. S. Pa. § 595. This provides, so far as material:

"• • • and it shall be lawful for any corporation • • • to sell, assign, dispose of and convey to any cor-

poration created under or accepting the provisions of this act, its franchises, and all its property, real, personal and mixed, and thereafter such corporation shall cease to exist, and the said property and franchises not inconsistent with this act, shall thereafter be vested in the corporation so purchasing as aforesaid: * * *"

It will be observed that the statute speaks in terms of a sale rather than of a merger. It is true that it is provided that the selling corporation "shall cease to exist"; but this has been construed to refer primarily to a cessation of carrying on the business for which the corporation was created. See Merwine v. Mt. Pocono Light & Imp. Co., 304 Pa. 517, 521, 156 A. 150. It will also be observed that nothing is said as to the liability of the transferee for the debts of the transferor. In the case at bar assumption of liability was accomplished by contract; in the absence of a contractual assumption of debts it would seem that creditors of the transferor could hold the transferee liable only on principles of fraudulent conveyance and to the extent of the value of the assets received. See Merwine v. Mt. Pocono Light & Imp. Co., supra, at page 525, 156 A. 150. In several cases transfers made pursuant to this act have been referred to as purchases and sales. See Greensburg Borough v. Westmoreland Water Co., 240 Pa. 481, 485, 87 A. [fol. 192] 995; Koehler v. St. Mary's Brewing Co., 288 Pa. 648, 653, 77 A. 1016, 139 Am. St. Rep. 1024; Carr v. Rochester Tumbler Co., 207 Pa. 392, 395, 56 A. 945. In other cases, the language of the opinions seems to indicate that a transfer under the 1874 Act is regarded as effecting a merger. Pennsylvania Utilities Co. v. Public Service Comm., 69 Pa. Super. 612, 615; York Haven Water & Power Co. v. Public Service Comm., 287 Pa. 241, 246, 134 A. 419. Such characterizations are not conclusive of the present issue. In American Gas & Elec. Co. v. Commissioner, 2 Cir., 85 F. 2d 527, this court stated as an essential of such a merger as would entitle the successor corporation to claim deductions of the unamortized bond discount and expense of the merged corporation, that the successor must by operation of law become responsible for the liabilities of the merged corporation. A provision imposing such liability is certainly customary in technical merger statutes; such liability is expressly provided in the "long form merger" Act of

1909, as it is also in the Act of May 5, 1933, 15 P. S. Pa. § 2851—801 et seq. The absence of such a provision in the Act of 1874, and the construction placed upon that statute in Merwine v. Mt. Pocono Light & Imp. Co., 304 Pa. 517, 156 A. 150, seem to us fatal to the taxpayer's contentions. In that case the plaintiff, a creditor of the selling corporation, moved to substitute the purchasing corporation as a party defendant in an action pending against the seller. The denial of that motion, affirmed by the Supreme Court, shows that under the Act of 1874, the purchasing corporation does not succeed, simply by operation of law, to the liabilities of the seller. Accordingly, we think the case at bar is governed by our decision in American Gas & Elec. Co. v. Commissioner, supra.

Order affirmed.

[fol. 198] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,
against
COMMISSIONER OF INTERNAL REVENUE, Respondent

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,
against
COMMISSIONER OF INTERNAL REVENUE, Respondent

Before Manton, Swan and Chase, Circuit Judges

Gerald J. Dean, William H. S. Wells, Francis J. Sweeney, C. M. Trammell, Maurice Bower Saul, Attorneys for Petitioner. Saul Ewing, Remick & Saul, of Counsel.

Per CURIAM:

Petitions for rehearing denied.

M. T. M., T. W. S., H. B. C., Circuit Judges.

Filed September 1, 1938.

[fol. 199] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 1st day of September, one thousand nine hundred and thirty-eight.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Harrie B. Chase, Circuit Judges.

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE, Respondent

(And Another Case)

A petition for a rehearing having been filed herein by counsel for the petitioner;

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

Wm. Parkin, Clerk.

[fol. 200] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. General Gas and Electric Corpn. vs. Commissioner of Internal Revenue. Order. United States Circuit Court of Appeals, Second Circuit. Filed Sep. 1, 1938. William Parkin, Clerk.

[fol. 201] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 1st day of September, one thousand nine hundred and thirty-eight.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Harrie B. Chase, Circuit Judges.

No. 222

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is affirmed.

It is further ordered that a mandate issue to the said Board in accordance with this decree.

Wm. Parkin, Clerk, by D. E. Roberts, Deputy Clerk.

[fol. 202] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. General Gas & Electric Corpn. vs. Commissioner of Internal Revenue. (No. 222.) Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Sep. 1, 1938. William Parkin, Clerk.

[fol. 203] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 202, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of General Gas & Electric Corporation, Petitioner, against Commissioner of Internal Revenue, Respondent, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this thirtieth day of November, in the year of our Lord one thousand nine hundred and thirty-eight, and of the Independence of the said United States the one hundred and sixty-third.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 204] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 3, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following the hearing of Nos. 486 and 487.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File Nos. 42,977, 42,978. U. S. Circuit Court of Appeals, Second Circuit. Term No. 492. General Gas and Electric Corporation, petitioner, vs. Commissioner of Internal Revenue. Term No. 493. General Gas and Electric Corporation, petitioner, vs. Commissioner of Internal Revenue. Petition for writs of certiorari and exhibits thereto. Filed December 1, 1938. Term Nos. 492, O. T., 1938, 493, O. T., 1938.

FILE COPY

DEC 1
CHARLES ELMORE

No. 492-3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

GENERAL GAS AND ELECTRIC CORPORATION,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

MAURICE BOWER SAUL,
Counsel for Petitioner.

WILLIAM H. S. WELLS,
BRADFORD S. MAGILL,
FRANCIS J. SWEENEY,
C. M. TRAMMELL,
Of Counsel.

ALLEN, LANE & SCOTT, PRS., PHILADELPHIA

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ARGUMENT:

Point I. The merger of two Pennsylvania Corporations under the Pennsylvania General Corporation Act of 1874, as amended, is such a merger as entitles the successor corporation upon the redemption and retirement of the bonds of the predecessor corporation to take as a deduction in computing its taxable income under the Revenue Act of 1926 the unamortized debt discount and expense which had been incurred at the time of the issuance of the bonds 10

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938. No. .

General Gas and Electric Corporation,
Petitioner,

v.

Commissioner of Internal Revenue,
Respondent.

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of the General Gas and Electric Corporation respectfully prays for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit to review the judgment of that Court entered in this case on July 18, 1938, rehearing denied September 1, 1938, and therefore shows as follows:

I.

SUMMARY STATEMENT OF MATTER INVOLVED.

Petitioner, General Gas and Electric Corporation, a corporation organized and existing under the laws of the State of Delaware, is and was at all times material to this proceeding, engaged in the business of holding securities thereby controlling public utility subsidiaries serving in various States (R. 96).

By an agreement entered into by and between the General Gas and Electric Corporation and its subsidiaries, the entire Federal Income Tax liability of each subsidiary corporation is to be assessed against and paid by the General Gas and Electric Corporation (R. 96).

In March 1926 the Northern Pennsylvania Power Company (a Pennsylvania Corporation), an affiliated subsidiary of the General Gas and Electric Corporation, acquired all of the assets, property and franchises and assumed all of the liabilities of the North Penn Power Company (a Pennsylvania Corporation) pursuant to and by virtue of the provisions of Section 23 of the General Corporation Act of 1874, as amended (appendix *infra*), of the laws of the Commonwealth of Pennsylvania (R. 96, 97).

Included among the liabilities of the North Penn Power Company, which has been assumed by the Northern Pennsylvania Power Company, were bonds in the principal sum of $552,700 (R. 97).

During the years 1926 and 1927 the Northern Pennsylvania Power Company retired all of the aforesaid outstanding bonds of the North Penn Power Company. At the time of retirement in 1926 there remained as unamortized debt discount and expense incurred upon the issuance and sale of these bonds the sum of $47,058.08 and with respect to those retired in 1927 the unamortized debt discount and expense amounted to $53,441.71 (R. 98).

In 1926 the Northern Pennsylvania Power Company also acquired, pursuant to the provisions of Section 23 of the General Corporation Act of 1874, as amended, (appendix *infra*) of the laws of the Commonwealth of Pennsylvania, all of the assets and assumed all of the liabilities of the Susquehanna County Light and Power Company (a Pennsylvania Corporation) (R. 99).

Included among the liabilities of the Susquehanna County Light and Power Company were bonds in the principal amount of $600,000. In 1926 the Northern Pennsylvania Power Company redeemed and retired the entire issue of the aforesaid bonds. At the date of redemption there remained $19,922.11 unamortized debt discount and expense which had been incurred upon the issuance and sale of the bonds by the Susquehanna County Power and Light Company (R. 100).

For the taxable years 1926 and 1927 General Gas and Electric Corporation filed consolidated income tax returns for itself and its subsidiaries, including

the Northern Pennsylvania Power Company. In its returns for those years the General Gas and Electric Corporation in computing the taxable income deducted the unamortized debt discount and expense sustained by the Northern Pennsylvania Power Company at the time of the retirement by it of the bonds of the North Penn Power Company and the Susquehanna County Light and Power Company.

The Commissioner of Internal Revenue refused to allow the deductions in the years 1926 and 1927. Petitioner filed separate petitions to the United States Board of Tax Appeals, one for the year 1926 and the other for the year 1927, and since they presented a common question of law the same were consolidated for hearing before the Board which held in a memorandum opinion that the unamortized debt discount and expense were not proper deductions. Separate petitions for review were presented to the Circuit Court of Appeals for the Second Circuit, which petitions were consolidated and the orders of the Board of Tax Appeals affirmed in the judgment rendered by that Court.

(There were two petitions to the United States Board of Tax Appeals, one bearing Docket No. 52639 and the other bearing Docket No. 59469. The cases were consolidated before the Circuit Court and since all of the facts essential to the determination of the proceedings appear in case bearing Docket No. 52639, all references to the Record refer to the Record in that case.)

II.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRITS.

The Circuit Court of Appeals for the Second Circuit in holding that the petitioner in computing its consolidated income tax was not entitled to deduct the unamortized debt discount and expense outstanding on the books of the Northern Pennsylvania Power Company at the time that it redeemed and retired certain bonds is in direct conflict with the holding of the Circuit Court of Appeals for the Third Circuit in the case of *Metropolitan Edison Company, Petitioner* v. *Commissioner of Internal Revenue, Respondent* (C. C. A. 3rd 1938), 98 Fed. (2d) 807, and the holding of the same Court in the case of *Pennsylvania Water and Power Company, Petitioner* v. *Commissioner of Internal Revenue, Respondent* (C. C. A. 3rd, 1938), 98 Fed. (2d) 812. In both of the cases decided by the Circuit Court of Appeals for the Third Circuit, the petitioners therein had redeemed and retired bonds which had previously been issued by corporations which had been absorbed by the petitioners therein in accordance with the provisions of Section 23 of the General Corporation Act of 1874 as amended (appendix *infra*), of the laws of the Commonwealth of Pennsylvania. In their income tax returns for the years in which the bonds had been redeemed and retired the petitioners therein deducted the unamortized debt discount and expense connected with the issuance of the Bonds. In those cases the

Commissioner of Internal Revenue, as in the instant case, disallowed the deductions so claimed and was sustained by the United States Board of Tax Appeals. The orders of the United States Board of Tax Appeals were, however, reversed by the Circuit Court of Appeals for the Third Circuit on petitions for review.

In deciding the ***Metropolitan Edison case*** and the ***Pennsylvania Water and Power Company case*** the Circuit Court of Appeals for the Third Circuit held that the transactions by which the petitioners therein took over the subsidiary corporation constituted true mergers under the laws of the Comomnwealth of Pennsylvania and were not sales, so that the petitioners therein were entitled to the deductions claimed.

The Circuit Court of Appeals for the Second Circuit in the instant case, however, in passing upon the same question, held that the transactions by which the Northern Pennsylvania Power Company absorbed both the North Penn Power Company and the Susquehanna County Light and Power Company were not true mergers but sales and, therefore, petitioner was not entitled to take as a deduction on the consolidated income tax returns for the years 1926 and 1927, the unamortized debt discount and expense remaining when the bonds were redeemed and retired in those years.

The decision of the Circuit Court of Appeals for the Second Circuit in the instant case is directly contrary to the decision of the Circuit Court of Appeals for the Third Circuit in the case of *Metropolitan Edison Company, Petitioner* v. *Commissioner of Internal Revenue, Respondent* (C. C. A. 3rd, 1938), 98 Fed. (2d) 807, and *Pennsylvania Water and Power*

Company, Petitioner v. *Commissioner of Internal Revenue, Respondent* (C. C. A. 3rd, 1938), 98 Fed. (2d) 812, although each Court had before it the identical question for disposition.

If the decision of the Circuit Court of Appeals for the Second Circuit is allowed to stand, there is a direct conflict with the two decisions of the Circuit Court of Appeals for the Third Circuit. The question involved in all of these cases is one of general importance affecting the income tax liability of a number of corporations. The principle involved will find frequent application in connection with the taxation of corporations which, having merged with others in accordance with certain statutory provisions of the Commonwealth of Pennsylvania, redeem and retire bonds issued by the absorbed companies on which there is still outstanding unamortized debt discount and expense incurred at the time of the issuance of the bonds.

WHEREFORE it is respectfully submitted that this petition for writs of certiorari to review the judgment of the Circuit Court of Appeals for the Second Circuit should be granted.

And your petitioner will ever pray, etc.

GENERAL GAS AND ELECTRIC CORPORATION,
By
MAURICE BOWER SAUL,
Counsel for Petitioner.

WILLIAM H. S. WELLS
BRADFORD S. MAGILL
FRANCIS J. SWEENEY
C. M. TRAMMELL
Of Counsel.

DECEMBER 1, 1938.

BRIEF IN SUPPORT OF PETITION FOR WRITS OF CERTIORARI.

OPINIONS OF THE COURTS BELOW.

The opinion of the Circuit Court of Appeals is reported in 98 Fed. (2d) 561. It will be found on page 184 of the Record. The findings of fact and the opinion of the Board of Tax Appeals are contained in a memorandum opinion entered June 3, 1937, and will be found on pages 166-176 of the Record.

JURISDICTION.

1. The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938; Title 28 U. S. C. A., Section 347.

2. The judgment of the Circuit Court of Appeals was entered on July 18, 1938 (R. 184). Petition for rehearing was filed August 3, 1938, within the time provided by the Rules of the Circuit Court of Appeals (R. 188), and the petition for a rehearing was denied September 1, 1938 (R. 192).

3. The nature of the case, the rulings of the Board of Tax Appeals, and the Circuit Court of Appeals for the Second Circuit, and the reason why a writ of certiorari should be granted, are set forth in the foregoing petition.

4. The ground upon which the writs are asked for is based upon Rule 38, 5 (b) of the Rules of your Honorable Court for the reason that the lower court has rendered a decision involving a Federal question in conflict with the decisions of the Circuit Court of Appeals for the Third Circuit in the cases of *Metropolitan Edison Company, Petitioner* v. *Commissioner of Internal Revenue, Respondent* (C. C. A. 3rd, 1938), 98 Fed. (2d) 807 and *Pennsylvania Water and Power Company, Petitioner* v. *Commissioner of Internal Revenue, Respondent* (C. C. A. 3rd, 1938), 98 Fed. (2d) 812.

STATEMENT OF THE CASE AND QUESTIONS INVOLVED.

The petition for the writs of certiorari contains a statement of the question involved in this case, as well as of all the facts material to its consideration. In the interest of brevity the same have not been repeated here.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred—

1. In holding that the absorption of the North Penn Power Company and the Susquehanna County Light and Power Company by the Northern Pennsylvania Power Company pursuant to the provisions of Section 23 of the Pennsylvania General Corporation Act of 1874 as amended, did not have the incidents of a strict merger under Pennsylvania law.

2. In holding that the Northern Pennsylvania Power Company in determining its net taxable income was not entitled to deduct the unamortized debt discount and expense in connection with the bonds of the North Penn Power Company and Susquehanna County Light and Power Company which were redeemed and retired in the taxable years 1926 and 1927.

3. In entering judgment for the respondent.

SUMMARY OF ARGUMENT.

The argument is summarized in the proposition set forth under the caption "Argument."

ARGUMENT.

The Merger of Two Pennsylvania Corporations Under the Pennsylvania General Corporation Act of 1874, as Amended, is Such a Merger as Entitles the Successor Corporation Upon the Redemption and Retirement of the Bonds of the Predecessor Corporation to Take as a Deduction in Computing its Taxable Income Under the Revenue Act of 1926 the Unamortized Debt Discount and Expense Which Had Been Incurred at the Time of the Issuance of the Bonds.

The lower court in its opinion very ably summarized the issue in controversy in this proceeding in the following language, page 563 of the reports:

"It is conceded that unamortized discount and expenses incurred in connection with the issue and sale of bonds are deductions available to the issuing corporation when it pays them off prior to maturity. See Helvering *v.* Union Pacific R. Co., 293 U. S. 282, 55 S. Ct. 165, 79 L. Ed. 363; Great Western Power Co. *v.* Commissioner, 297 U. S. 543, 56 S. Ct. 576, 80 L. Ed. 853. It is also not disputed that such items are allowable deductions to a successor corporation which through merger or consolidation has carried forward the corporate identity of the issuing corporation and has succeeded by operation of law to its rights and liabilities. American Gas & Elec. Co. *v.* Commissioner, 2 Cir., 85 F. 2d 527; New York Central R. Co. *v.* Commissioner, 2 Cir., 79 F. 2d 247, certiorari denied 296 U. S. 653, 56 S. Ct. 370, 80 L. Ed. 465; Western Maryland Ry. Co. *v.* Commissioner, 4 Cir., 33 F. 2d 695. When, however, the successor corporation acquires the assets of the issuing corporation by purchase, rather than by a consolidation or merger, such deductions are not available. American Gas & Elec. Co. *v.* Commissioner, 2 Cir., 35 F. 2d 527; American Gas & Elec. Co. *v.* United States, 17 F. Supp. 151, Ct. Cl.; Turner-Farber-Love Co. *v.* Helvering, 62 App. D. C. 369, 68 F. 2d 416. Whether the transactions at bar are to be classed as mergers or as purchases is the issue in controversy.

"The solution of the problem must be sought in the law of Pennsylvania."

The lower court then proceeded to determine what it believed to be the law of Pennsylvania as to the

effect of a transaction by which the assets and franchises of one corporation are taken over by another pursuant to the provisions of Section 23 of the Pennsylvania General Corporation Act of April 1874, as amended. The court held that such a transaction did not constitute a technical merger since in its opinion the successor corporation under the Act of 1874, as amended, does not become responsible for the liabilities of the merged corporation by operation of law. The court thereby concluded that the Northern Pennsylvania Power Company did not become responsible by operation of law for the liabilities of the North Penn Power Company and the Susquehanna County Light and Power Company, and consequently, under the decision in *American Gas & Electric Company* v. *Commissioner* (C. C. A. 2), 85 Fed. (2d) 527, the deduction of unamortized debt discount and expense should be disallowed.

The Circuit Court of Appeals for the Third Circuit in the case of *Metropolitan Edison Company, Petitioner,* v. *Commissioner of Internal Revenue, Respondent* (C. C. A. 3rd, 1938), 98 Fed. (2d) 807, and in the case of *Pennsylvania Water and Power Company, Petitioner,* v. *Commissioner of Internal Revenue, Respondent* (C. C. A. 3rd, 1938), 98 Fed. (2d) 812, had before it for disposition the exact question presented to the Circuit Court of Appeals for the Second Circuit in this proceeding. The taxpayers in those cases had been involved in transactions under the Pennsylvania General Corporation

Act of 1874, as amended (appendix *infra*), and had deducted for the purpose of computing their income tax liability in the years in which they redeemed bonds of predecessor corporations the unamortized debt discount and expense incurred at the time of the issuance of the bonds.

The Circuit Court of Appeals for the Third Circuit found that under the law of Pennsylvania a successor corporation becomes responsible by operation of law for the liabilities of a predecessor corporation with which it is merged under the Pennsylvania General Corporation Act of 1874, as amended (appendix *infra*), and, as a consequence, the petitioners in the cases before it were entitled to the deductions claimed under the ruling in the *American Gas & Electric Company* v. *Commissioner*, 85 Fed. (2d) 527 (C. C. A. 2); *New York Cent. R. Co.* v. *Commissioner*, 79 Fed. (2d) 247 (C. C. A. 2); cert. den. 296 U. S. 653; *Western Maryland Ry. Co.* v. *Commissioner*, 33 Fed. (2d) 695 (C. C. A. 4); *American Gas & Elec. Co.* v. *U. S.*, 17 Fed. Supp. 151 (Ct. Cls.).

Petitioner here contends that the law of Pennsylvania with respect to mergers under the Act of 1874, as amended (appendix *infra*), is as determined by the Circuit Court of Appeals for the Third Circuit for the reason set forth in the opinion of that court in the case of *Metropolitan Edison Company, Petitioner* v. *Commissioner of Internal Revenue, Respondent* (C. C. A. 3rd, 1938), 98 Fed. (2d) 807, which for the sake of brevity will not be repeated here.

Since the Circuit Court of Appeals for the Second Circuit came to a contrary determination as to the law of Pennsylvania with respect to mergers under the Act of 1874, as amended (appendix *infra*), there is a direct conflict in the decisions in the two circuits in cases raising identical issues with respect to the Federal Income Tax law. There is, therefore, a basis for the invocation of Rule 38 of this Court.

It is respectfully called to the attention of your Honorable Court that the Commissioner of Internal Revenue, through his counsel, filed with your Honorable Court on November 23, 1938, petitions for writs of certiorari to review the decisions of the Circuit Court of Appeals for the Third Circuit in the cases of *Metropolitan Edison Company, Petitioner* v. *Commissioner of Internal Revenue, Respondent, supra,* and *Pennsylvania Water and Power Company, Petitioner* v. *Commissioner of Internal Revenue, Respondent, supra.*

CONCLUSION.

It is therefore respectfully submitted that the petition for writs of certiorari should be granted as prayed for.

MAURICE BOWER SAUL,
Counsel for Petitioner.

WILLIAM H. S. WELLS
BRADFORD S. MAGILL
FRANCIS J. SWEENEY
C. M. TRAMMELL
Of Counsel.

DECEMBER 1, 1938.

APPENDIX.

STATUTES INVOLVED.

Section 23 of the Pennsylvania General Corporation Act of 1874, as amended.

(Purdon's Penna. Statutes, Annotated (Permanent Ed.), Title 15, Section 595.)

"SEC. 595. *Reduction of capital stock; change in value of shares; conveyance of franchise and property.*—Any corporation created under the provisions of this act, and any corporation of the classes named in the second section thereof, that is now in existence by virtue of any law of this Commonwealth, may reduce its capital stock or alter and change the par value of the shares thereof, by a vote of the stockholders taken in the manner and under the regulations prescribed in the eighteenth, nineteenth, twentieth, twenty-first, and twenty-second sections of this act; and it shall be lawful for any corporation in the same manner to sell, assign, dispose of, and convey to any corporation created under or accepting the provisions of this act, its franchises, and all its property, real, personal, and mixed, and thereafter such corporation shall cease to exist, and the said property and franchises not inconsistent with this act, shall thereafter be vested in the corporation so purchasing as aforesaid: *Provided,* That the returns required by said section shall not be filed in the office of the Secretary of the Commonwealth until each and every corporation, so selling, assigning, disposing, and conveying such franchises and prop-

erty, shall have filed with the Secretary of the Commonwealth, a certificate from the Auditor General of the Commonwealth, setting forth that all reports required by the Auditor General of the Commonwealth have been duly filed to the date of the proposed sale, assignment, disposition, and conveyance; and that all taxes due the Commonwealth of Pennsylvania have been paid up to and including such date. * * * (1874, April 29, P. L. 73, Sec. 23; 1876, April 17, P. L. 30, Sec. 5; 1915, June 2, P. L. 724, Sec. 1; 1931, June 12, P. L. 561, Sec. 1)."

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Nos. 492-493.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1938.

GENERAL GAS AND ELECTRIC CORPORATION,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

BRIEF ON BEHALF OF PETITIONER SUR WRITS OF CERTIORARI GRANTED JANUARY 3, 1939.

MAURICE BOWER SAUL,
Counsel for Petitioner.

WILLIAM H. S. WELLS,
BRADFORD S. MAGILL,
C. M. TRAMMELL,
Of Counsel.

ERRATA:

The references herein to the Record are to the pages of the original Transcript of the Record in case No. 492 (with the exception noted below) and differ from the pages in the re-printed Transcript of the Record as follows:

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1938. NOS. 492-493.

General Gas and Electric Corporation,
Petitioner,

v.

Commissioner of Internal Revenue,
Respondent.

BRIEF ON BEHALF OF PETITIONER SUR WRITS OF CERTIORARI GRANTED JANUARY 3, 1939.

OPINIONS OF THE COURTS BELOW.

The opinion of the Circuit Court of Appeals is reported in 98 Fed. (2d) 561. It will be found on page 184 of the Record.* The findings of fact and the opinion of the Board of Tax Appeals are contained in a memorandum opinion entered June 3, 1937, and will be found on pages 166-176 of the Record.

*There are two petitions to the United States Board of Tax Appeals, one bearing Docket No. 52639 and the other bearing Docket No. 59469. The cases were consolidated before the Circuit Court and since all of the facts essential to the determination of the proceedings appear in case bearing Docket No. 52639, all references to the Record refer to the Record in that case.

JURISDICTION.

The judgments of the Circuit Court of Appeals were entered on July 18, 1938 (R. 184). The petition for re-hearing was filed on August 3, 1938, within the time provided by the rules of the Circuit Court of Appeals for the Second Circuit (R. 188), and the petition for re-hearing was denied September 1, 1938 (R. 192). On December 1, 1938, petitioner filed with your Honorable Court a petition for writs of certiorari to the United States Circuit Court of Appeals for the Second Circuit, which petition was allowed by your Honorable Court on January 3, 1939.

STATUTES INVOLVED.

Section 237 (a) of the Revenue Act of 1926. (Appendix C, *infra*) Section 23 of the Act of April 29, 1874, as amended, of the Pennsylvania General Assembly, Title, 15 Purdon's Statutes, Section 595 (Appendix B, *Infra*).

STATEMENT OF THE CASE.

Petitioner, General Gas and Electric Corporation, a corporation organized and existing under the laws of the State of Delaware, is and was at all times material to this proceeding, engaged in the business of holding securities thereby controlling public utility subsidiaries serving in various States (R. 96).

By an agreement entered into by and between the General Gas and Electric Corporation and its subsidiaries, the entire Federal Income Tax liability of

each subsidiary corporation is to be assessed against and paid by the General Gas and Electric Corporation (R. 96).

In March, 1926, the Northern Pennsylvania Power Company (a Pennsylvania Corporation), an affiliated subsidiary of the General Gas and Electric Corporation, acquired all of the assets, property and franchises and assumed all of the liabilities of the North Penn Power Company (a Pennsylvania Corporation) pursuant to and by virtue of the provisions of Section 23 of the General Corporation Act of 1874, as amended (appendix *infra*), of the laws of the Commonwealth of Pennsylvania (R. 96, 97).

Included among the liabilities of the North Penn Power Company, which has been assumed by the Northern Pennsylvania Power Company, were bonds in the principal sum of $552,700 (R. 97).

During the years 1926 and 1927 the Northern Pennsylvania Power Company retired all of the aforesaid outstanding bonds of the North Penn Power Company. At the time of retirement in 1926 there remained as unamortized debt discount and expense incurred upon the issuance and sale of these bonds the sum of $47,058.08 and with respect to those retired in 1927 the unamortized debt discount and expense amounted to $53,441.71 (R. 98).

In 1926 the Northern Pennsylvania Power Company also acquired, pursuant to the provisions of Section 23 of the General Corporation Act of 1874, as amended (appendix *infra*), of the laws of the Commonwealth of Pennsylvania, all of the assets and assumed all of the liabilities of the Susquehanna County

Light and Power Company (a Pennsylvania Corporation) (R. 99).

Included among the liabilities of the Susquehanna County Light and Power Company were bonds in the principal amount of $600,000. In 1926 the Northern Pennsylvania Power Company redeemed and retired the entire issue of the aforesaid bonds. At the date of redemption there remained $19,922.11 unamortized debt discount and expense which had been incurred upon the issuance and sale of the bonds by the Susquehanna County Power and Light Company (R. 100).

For the taxable years 1926 and 1927 General Gas and Electric Corporation filed consolidated income tax returns for itself and its subsidiaries, including the Northern Pennsylvania Power Company. In its returns for those years the General Gas and Electric Corporation in computing the taxable income deducted the unamortized debt discount and expense sustained by the Northern Pennsylvania Power Company at the time of the retirement by it of the bonds of the North Penn Power Company and the Susquehanna County Light and Power Company.

The Commissioner of Internal Revenue refused to allow the deductions in the years 1926 and 1927. Petitioner filed separate petitions to the United States Board of Tax Appeals, one for the year 1926 and the other for the year 1927, and since they presented a common question of law the same were consolidated for hearing before the Board which held in a memorandum opinion that the unamortized debt discount

and expense were not proper deductions and determined deficiencies in petitioner's income tax for those years in the amounts of $24.21 and $3,164.80 respectively (R. 171 in case bearing Docket No. 52,639 and R. 177 in case bearing Docket No. 59,469). Separate petitions for review were presented to the Circuit Court of Appeals for the Second Circuit, which petitions were consolidated and the orders of the Board of Tax Appeals affirmed in the judgment rendered by that Court.

On December 1, 1938, petitioner filed with your Honorable Court petitions for writs of certiorari to the United States Circuit Court of Appeals for the Second Circuit, alleging that the decision of the court below was in conflict with the decisions of the Circuit Court of Appeals for the Third Circuit in *Metropolitan Edison Company* v. *Commissioner*, 98 F. (2d) 807 and *Pennsylvania Water & Power Company* v. *Commissioner*, 98 F. (2d) 812, which cases presented precisely the same question as the instant case and involved the same Federal Statutes and regulations and the same provisions of the Pennsylvania Statutes. Your Honorable Court allowed petitions for writs of certiorari on January 3, 1939.

SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred—

1. In holding that the absorption of the North Penn Power Company and the Susquehanna County

Light and Power Company by the Northern Pennsylvania Power Company pursuant to the provisions of Section 23 of the Pennsylvania General Corporation Act of 1874 as amended, did not have the incidents of a strict merger under Pennsylvania law.

2. In holding that the Northern Pennsylvania Power Company in determining its net taxable income was not entitled to deduct the unamortized debt discount and expense in connection with the bonds of the North Penn Power Company and Susquehanna County Light and Power Company which were redeemed and retired in the taxable years 1926 and 1927.

3. In entering judgment for the respondent.

SUMMARY OF ARGUMENT.

It is conceded as a general proposition, that a corporation which succeeds through merger to the assets and liabilities of a corporation issuing bonds at a discount, is entitled to the same deductions for income tax purposes on account of unamortized bond discount and expense as the issuer when the bonds are retired prior to maturity.

The transactions by which the Northern Pennsylvania Power Company succeeded to the assets and liabilities of the North Penn Power Company and the Susquehanna County Light and Power Company in accordance with the provisions of Section 23 of the Act of 1874 as amended, were, under Pennsylvania law, strict mergers.

Transactions such as those involved in the present case effected under the provisions of Section 23 of the Act of 1874 as amended, are strict mergers since under the Pennsylvania law the absorbed companies ceased to exist and all of their assets and liabilities were, by operation of law, assumed by the Northern Pennsylvania Power Company.

Regardless of the technical nature of the transactions in the present case by which the Northern Pennsylvania Power Company acquired the assets and liabilities of the affiliated companies, the result was a change in form only so that the loss represented by the unamortized bond discount and expense was actually sustained by the Northern Pennsylvania Power Company when it retired the bonds of the absorbed companies prior to maturity and, therefore, it should be allowed to deduct the same in computing its net income for tax purposes.

I.

Preliminary Statement.

Your Honorable Court granted petitions for writs of certiorari in three cases involving substantially the same issues, namely, *Commissioner of Internal Revenue* v. *Metropolitan Edison Company*, No. 486, October Term 1938, *Commissioner of Internal Revenue* v. *Pennsylvania Water and Power Company*, No. 487, October Term 1938, and *General Gas and Electric Corporation* v. *Commissioner of Internal Revenue*,

Nos. 492-493, October Term 1938. All three of these cases are now before the Court for hearing.

Each of the three taxpayer corporations in filing in conjunction with their subsidiary companies consolidated income tax returns for the years 1926, 1927 and 1928, as the case might be, deducted unamortized debt discount and expense remaining upon the retirement in those years of bonds previously issued by corporations which had been absorbed by the taxpayer corporations or their subsidiaries in compliance with the laws of Pennsylvania. In each instance the Commissioner of Internal Revenue disallowed the deductions and in so doing was sustained by the United States Board of Tax A, eals. All three taxpayer corporations filed separate petitions for review of the judgment of the United States Board of Tax Appeals with the United States Circuit Court of Appeals having jurisdiction in the particular case.

The General Gas and Electric Corporation filed its petition for review in the United States Circuit Court of Appeals for the Second Circuit. The Metropolitan Edison Company and the Pennsylvania Water and Power Company filed their petitions for review in the United States Circuit Court of Appeals for the Third Circuit.

In each case counsel for the Commissioner of Internal Revenue conceded that unamortized discount and expense incurred in connection with the issue and sale of bonds are allowable deductions to a successor corporation when it pays off the bonds prior to maturity, provided the successor corporation, through

merger or consolidation, has carried forward the corporate identity of the issuing corporation and has succeeded, by operation of law, to its rights and liabilities. The issue in each case, therefore, was whether the transactions by which the taxpayer corporations or their subsidiaries had absorbed other corporations under Pennsylvania law were such as to entitle the taxpayer corporations or their subsidiaries to deduct the unamortized discount and expense incurred in connection with the issue and sale of bonds by the absorbed corporations when such bonds were paid off by the taxpayer corporations or their subsidiaries prior to maturity.

In deciding this issue the Circuit Court of Appeals for the Second Circuit found that the transactions involved in the *General Gas and Electric Corporation* case constituted a purchase rather than a merger under Pennsylvania law, and that therefore, it was not entitled to deduct the unamortized debt discount and expense in connection with the bonds issued by the absorbed corporations when the same were retired prior to maturity. In deciding substantially the same issue with respect to the transactions involved in the *Metropolitan Edison Company* case and the *Pennsylvania Water and Power Company* case, the Circuit Court of Appeals for the Third Circuit found that under Pennsylvania law they were such as to entitle the taxpayer corporations to deduct the unamortized debt discount and expense in connection with the bonds issued by the absorbed corporations when the bonds were retired prior to maturity.

We have therefore a direct conflict in the two Circuit Courts of Appeals in cases involving similar if not identical situations and issues.

It is contended on behalf of the petitioner, the General Gas and Electric Corporation, that the Circuit Court of Appeals for the Second Circuit erred in holding that the transaction by which its subsidiary, the Northern Pennsylvania Power Company succeeded to the assets and liabilities of two of its subsidiaries, the North Penn Power Company and the Susquehanna County Light and Power Company, were not under Pennsylvania law strict mergers and, that, it further erred in failing to hold that the transactions involved a change in form only so that, irrespective of the technical nature of the transactions, the deductions claimed for income tax purposes should have been allowed.

II.

A Corporation Succeeding Through Merger to the Assets and Liabilities of a Corporation Issuing Bonds at a Discount, in Retiring Such Bonds Prior to Maturity, is Entitled to the Same Deductions on Account of Bond Discount and Expense as the Issuing Corporation.

In corporate finance it is a common practice to issue bonds at a discount where the interest rate specified in a long term bond is less than the market rate so that investors are unwilling to pay par for the bonds. This discount, along with the expense involved upon the issuance of the bonds, is amortized over the life of the bonds and if the bonds are retired

prior to maturity, the unamortized bond discount and expense constitutes a loss. The remainder of the discount which has not been amortized must be paid by the corporation from its surplus or other funds.

As the Circuit Court of Appeals for the Second Circuit in this case, reported in 98 Fed. (2d) 561, stated in its opinion at page 563 of the Reports: "It is conceded that unamortized discount and expenses incurred in connection with the issue and sale of bonds are deductions available to the issuing corporation when it pays them off prior to maturity. See *Helvering* v. *Union Pacific R. Co.*, 293 U. S. 282, 55 S. Ct. 165, 79 L. Ed. 363; *Great Western Power Co.* v. *Commissioner*, 297 U. S. 543, 56 S. Ct. 576, 80 L. Ed. 853. It is also not disputed that such items are allowable deductions to a successor corporation which through merger or consolidation has carried forward the corporate identity of the issuing corporation and has succeeded by operation of law to its rights and liabilities. *American Gas & Elec. Co.* v. *Commissioner*, 2 Cir., 85 F. (2d) 527; *New York Central R. Co.* v. *Commissioner*, 2 Cir., 79 F. (2d) 247, certiorari denied 296 U. S. 653, 56 S. Ct. 370, 80 L. Ed. 465; *Western Maryland Ry. Co.* v. *Commissioner*, 4 Cir., 33 F. (2d) 695."

The petitioner contends that its subsidiary, the Northern Pennsylvania Power Company carried forward the corporate identity of the North Penn Power Company and the Susquehanna County Power and Light Company and succeeded by operation of law to their rights and liabilities when it absorbed these

companies in accordance with the provisions of the law of Pennsylvania under which the transactions were consummated.

III.

The Transactions by Which the Northern Pennsylvania Power Company Succeeded to the Assets and Liabilities of the North Penn Power Company and the Susquehanna County Power and Light Company Were, Under the Law of Pennsylvania, Strict Mergers.

In 1926 when the petitioner's subsidiary, the Northern Pennsylvania Power Company absorbed the North Penn Power Company and the Susquehanna County Power and Light Company, two forms of transactions were authorized under the laws of Pennsylvania by which the assets and franchises of one corporation might be taken over by another. One course of procedure, sometimes referred to in the Pennsylvania cases as the "long form merger," was provided for by the Act of May 3, 1909, Title 15, Purdon's Pennsylvania Statutes, Section 421, *et seq* (Appendix A *infra* p. 55). The other form of procedure, sometimes referred to in the Pennsylvania cases as the "short form merger," was provided for by Section 23 of the Act of April 29, 1874, as amended, Title 15, Purdon's Pennsylvania Statutes, Section 595. (Appendix B *infra* p. 58).

The "short form merger" provided for by the Act of April 29, 1874, as amended, was followed in the transactions by which the Northern Pennsylvania

Power Company absorbed the North Penn Power Company and the Susquehanna County Power and Light Company. Section 23 of the Statute provides in part that any corporation, with the consent of its stockholders, is entitled:

> "* * * to sell, assign, dispose of and convey to any corporation created under or accepting the provisions of this Act, its franchises and all of its property, real, personal and mixed and that thereafter such corporation shall cease to exist and that the said property and franchises not inconsistent with this Act shall thereafter be vested in the corporation so purchasing as aforesaid * * *."

The Circuit Court of Appeals for the Second Circuit in its opinion in this case sustained the contention of the Commissioner of Internal Revenue that in Pennsylvania in 1926 a technical merger could only be effected by complying with the provisions of the Act of May 3, 1909, for the reason that the provisions of that Act alone imposed liability by operation of law upon the successor corporation for the debts and liabilities of the absorbed corporation. Moreover, the Circuit Court of Appeals for the Second Circuit found that a transaction consummated in accordance with the provisions of the Act of 1874, as amended, constituted a sale and that the successor corporation did not succeed by operation of law to the debts and liabilities of the predecessor corporation. With this holding the petitioner cannot agree since it is believed that the same is not a correct interpretation of the law of Pennsylvania.

A discussion of the proper construction to be placed upon provisions of Section 23 of the Act of 1874 logically divides itself into several parts.

A. General Definition of the Term "Merger."

In order to determine whether or not the transactions by which the Northern Pennsylvania Power Company acquired the assets and liabilities of the two affiliated companies was a merger, it will be helpful to define the term as used by the courts.

There is a definite distinction between a "consolidation," "merger" and "sale" although the same has not always been observed by the legislatures in drafting statutes or by the courts in writing opinions. This fact has resulted in considerable confusion.

A *"consolidation"* is a combination of two or more corporations by which the property, rights and privileges and franchises of all the consolidating corporations are united in a single new corporation, the consolidating corporations losing their separate corporate identities. 15 *Fletcher Cyclopedia Corporations* (Permanent Edition), Section 7041, pp. 6-8.

A *"merger"* is the absorption of one or more corporations by another, the former ceasing to exist and the latter retaining its corporate identity with the added capital, franchises and powers of the merged corporation or corporations. "It is the uniting of two or more corporations by the transfer of property to one of them, which continues in existence, the others being merged therein." 15 *Fletcher Cyclopedia*

Corporations (Permanent Edition), Section 7041, pp. 7-8.

A "*sale*" is a transfer of property for a consideration, both the buying and selling corporations retaining their corporate existence. "Where there is a mere sale or transfer of the assets to another corporation a new corporation is not created, and the respective companies still remain distinct legal entites." 15 *Fletcher Cyclopedia Corporations* (Permanent Edition), Section 7044, p. 16.

B. PENNSYLVANIA CASES HOLD THAT A MERGER MAY BE ACCOMPLISHED UNDER THE PROVISIONS OF SECTION 23 OF THE ACT OF 1874, AS AMENDED.

Bearing in mind the distinction between a "merger," a "consolidation" and a "sale," let us proceed to an analysis of the Pennsylvania statutes and the decisions interpreting the same.

The Act of May 3, 1909, does not provide for a "*merger*" at all and only provides for a "*consolidation.*" It provides that a joint agreement shall be entered into, setting forth the "name of the *new* corporation," * * * "the *first* directors and officers," * * * "the manner of *converting the capital stock of each of said corporations into the stock of the new corporation,*" and that "new letters patent" shall be issued thereon. It is clear, therefore, that although the Act of 1909 uses the terms "merger and consolidation" it effects a combination of two or more corporations into a single *new corporation*

for which new letters patent must be issued and the stock of which must be substituted for the stock of the old corporations. Since the Act creates a *new corporation* in place of all the old corporations combined thereunder and does not provide for the *survival of one of the old corporations* with the added franchises, powers and property of the others, it is clear that this is a *"consolidation"* statute and not a *"merger"* statute.

The Act of April 29, 1874, as amended definitely provides a procedure by which the property, rights and franchises of one corporation may be united with those of another, the latter continuing its existence while the former, by operation of the statute, ceases to exist.

The Act of 1909 and the Act of 1874, as amended, were both repealed by enactment of the new Corporation Law of 1933 which substituted therefor new statutory provisions for mergers and consolidations clearly distinguishing between the two.

In *Pennsylvania Corporation Laws of 1933*, the following annotation by E. Russell Stockley, Esquire, Special Deputy Attorney General and draftsman of the Act of 1933, appears on page 104 as a note to Sec. 901:

> "As used in the Act of 1909, the words 'consolidate' and 'merge' were used synonymously, whereas such words technically, have different meanings. In a merger, only one of the constituent corporations survives whereas the others lose their identities; while in a consolidation all

> the constituents lose their identities and a new corporation springs up in their place. This Act, (referring to the 1933 Act) like the Uniform Act and the Acts of the states above listed, makes a clear distinction between a merger and a consolidation."

Mr. Stockley again in the last two sentences of his last two "comments" Section 311 of the *Pennsylvania Corporation Laws of 1933*, page 39 says:

> "* * * This provision of the Act provides a statutory procedure for the voluntary sale of the corporation property and assets, executing its franchises, and makes no change in the existing law. *It does not, however, authorize or have the effect of a merger similar to that formerly authorized by Section 23 of the Corporation Act of 1874 as amended.*" (Italics added.)

As has been pointed out, the Act of 1874, as amended, was the only law of Pennsylvania under which a merger could be effected prior to the new Corporation Law of 1933. If the transactions by which the Northern Pennsylvania Power Company absorbed the North Penn Power Company and the Susquehanna County Light & Power Company had taken place after the Corporation Act of 1933 became effective and the merger had been consummated under the provision of Article IX thereof, there would be no question but that the transactions were statutory mergers. The transactions by which the Northern Pennsylvania Power Company absorbed its two affiliates in question, however, took place in accord-

ance with the Act of 1874, as amended. The result of such a transaction has been repeatedly held by the courts of Pennsylvania to be a "merger."

In *Bly* v. *White Deer Mountain Water Co.*, 197 Pa. 80, the Supreme Court of Pennsylvania held that certain utility corporations could carry on their business only in the town, borough, city or district in which they were located and not in territory adjacent thereto. The practical result of this decision was that it became necessary for some utility companies to form a different corporation in other municipal districts where present or future operations might be contemplated. It being important to construct a separate operating plant in each district for which a charter had been granted, a plan was involved to unify the corporations so that the business could be carried on in substantially the same manner as if the charter of one corporation authorized it to operate in all the districts. The Legislature had prescribed two methods by which such unification might be effected: (1) merger under the Act of April 29, 1874, as amended or (2) consolidation under the Act of 1909.

As the effect of the Act of 1874, as amended, was to preserve the identity or existence of one corporation it offered certain advantages over the creation of a new corporation under the Consolidation Act of 1909, and was therefore largely employed. The two methods became distinguished by the respective descriptive, but untechnical names of "short form" and "long form" merger.

In *Pennsylvania Utilities Co.* v. *Public Service Commission,* 69 Pa. Sup. Ct. Rep. 612, Judge Kephart, now Chief Justice of the Supreme Court of Pennsylvania, made the following statement concerning the necessity of unifying the charters of such utility companies and recognized the fact that the merger resulting under the Act of 1874, as amended (which he called the Purchase Act of 1876, presumably because one of the steps in effecting the merger took the form of a sale) p. 614:

> "The question presented by this and a number of other appeals now before the court is of considerable importance to utility companies in the Commonwealth. After the decision in the case of Bly *v.* White Deer Mt. Water Company, 197 Pa. 80, there was a great effort by certain utilities to secure charters for the municipal districts they deemed necessary to their present and future plan of development. These concerns found it impossible, because of their great economic waste, to construct separate operating plants in each of the districts for which charters were secured. The legislature had supplied a way by which the charters might be unified and very much the same result obtained as though a charter for more than one district had been permitted. The Purchase Act of 1876 was largely employed. See Hey *v.* Springfield Water Co., 207 Pa. 38; Commonwealth *v.* Lumber City Water Co., 225 Pa. 317; Greensburg Boro. *v.* Westmoreland Water Co., 240 Pa. 485; and a list of authorities there referred to. *As a legal consequence the purchase act differs but little from the merger act which is*

used to some extent to consolidate companies." (Italics added.)

In *York Haven Water and Power Company et al.* v. *Public Service Commission of Pennsylvania et al.*, 287 Pa. 241, 134 Atl. 419, the question before the Court concerned the right of an electric light, heat, and power company to merge with an hydro-electric or water power company. The Court held that the merger could not be accomplished until the right of the hydro-electric company to furnish water to the public (which was not common to both companies) was legally discarded and in the course of the opinion Kephart, *J.*, said:

> "There are two forms of consolidation in Pennsylvania, a short and a long form merger. These are accomplished by the Act of 1876, as amended, and the Act of 1909. The Act of 1876, P. L. 33, as amended, provides that such sale may take place if the 'franchises are not inconsistent' with this act. And the merger Act of 1909, P. L. 408, permits consolidation between corporations 'transacting the same or similar lines of business.' * * * A sale or merger, under the Act of 1876, with its amendment, or the Act of 1909, which is practically the same, cannot take place until the company legally discards the offending power."

The Act of 1876 mentioned by the Court is the Act of 1874, as amended by the Act of April 17, 1876,

Section 5 and the Act of June 2, 1915, under which the transactions in the case at Bar were effected.

The language used by Judge Kephart in *Pennsylvania Utilities Company* v. *Public Service Commission, supra,* shows the confusion in the use of terms to which the courts fall prey, but indicates the recognition by the Supreme Court of Pennsylvania that transactions effected under the Act of 1874, as amended, and under the Act of 1909 are "practically the same."

As the above discussion shows, the Pennsylvania cases have held that the Act of 1874, as amended, is a merger statute and that transactions consummated thereunder are known in Pennsylvania as "short form mergers" as distinguished from "long form mergers" effected under the provisions of the Act of 1909.

Not only have the Pennsylvania courts recognized that the Act of 1874, as amended, is a merger statute, but transfers accomplished in accordance with the provisions of that Act meet all of the tests of a strict merger as set forth in the case of the *American Gas and Electric Co.* v. *Commissioner,* 2 Cir., 85 F. (2d) 527, where the Circuit Court of Appeals for the Second Circuit stated as an essential of such a merger as would entitle the successor corporation to claim deductions of the unamortized bond discount and expense of the merged corporation, that the merged corporation shall cease to exist and that the successor corporation must, by operation of law, become responsible for the liabilities of the merged corporation.

C. A Transaction Consummated Under the Act of 1874, as Amended, is a Merger and Not a Sale Since the Transferor Corporation Ceases to Exist.

Section 23 of the Act of 1874, as amended specifically provides that a corporation which sells, assigns, or conveys to another corporation its franchises and property shall thereafter "*cease to exist* and * * * the said property and franchises not inconsistent with this Act shall therefore be vested in the corporation so purchasing as aforesaid * * *."

In this connection the Circuit Court of Appeals for the Third Circuit in the case of *Metropolitan Edison Co.* v. *Commissioner*, 98 F. (2d) 807, at page 810 of the Reports said:

> "Both the short and long form statute are equally explicit in providing that the absorbed corporation ceases to exist. It would, therefore, appear that the effect of a merger under both statutes is the same in this respect."

In contending that the transactions in question were sales the Respondent may rely upon the following statement of Kephart, *J.*, in *In Re Buist Estate*, 297 Pa. 537, 147 Atl. 606:

> "Care should be taken to distinguish consolidations from proceedings under the Act of 1876, P. L. 33, often referred to as a 'short form merger' (See York Haven W. & P. Co. v. Pub. Ser. Com., 287 Pa. 241); its operation in reality effects a sale of all the company's assets."

The question before the Court in the above case involved the rights of a life tenant, receiving the income from a trust, to certain stock received by the trust upon the merger of a number of banking institutions into the Philadelphia National Bank under the Act of Congress empowering national banks to consolidate. All that Kephart, *J.*, intended to point out in that portion of his opinion above quoted was that the Act of 1876, amending the Act of 1874, did not provide for consolidations but only for mergers which were effected through a transfer by one corporation to another of "its franchises and all its property, real, personal and mixed,"—the transaction taking the form of a sale, thereby distinguishing such a transaction from a consolidation of national banks under the Act of Congress which is not accomplished through the form of a sale. The observation made by Kephart, *J.*, with reference to the Act of 1874, as amended, should not be taken as a holding by the Supreme Court of Pennsylvania that the Act does not effect a merger but only that a transaction under the Act effects a merger by employing as one of the steps a form of "sale."

In 8 *Thompson on Corporations*, Third Edition, Section 6012, page 66, the learned author says:

> "* * * In a merger of two or more corporations, one of the merged corporations survives; that is, the merger consists in the uniting of two or more by the transfer of all the property to some one of the existing corporations, which continues its existence, while the others are

swallowed up by or merged in the one that exists. And in this respect it differs from a consolidation, wherein * * * all the corporations terminate their existence and become parties to a new one. *The true test as to whether or not there has been a merger, is as to whether the existence of one of the corporations has been preserved and the other has ceased to exist.*" (Italics added.)

In Section 6019, at page 78, the author further says:

"* * * But, as already noticed, and as judicially held, consolidation may be effected by the purchase of all the property and franchises of one corporation by another * * *"

In 15 *Fletcher Cyclopedia Corporations* (permanent edition), Section 7044, pp. 16-17, the author says:

"* * * if the coming together of two corporations under the authority of law be in fact consolidation * * * it is of no consequence by what name the act is characterized nor is it of any consequence by what steps the result has been effected, *and one of those steps may take the shape of bargain and sale.*" (Italics added.)

If it is borne in mind that a merger may be accomplished in the form of a bargain and sale, a great deal of the confusing language in the cases is explained. It is submitted that the contention of the Respondent and the decision of the Circiut Court are based upon the failure to observe this fact. It is true that under the Pennsylvania "short form" merger, one step takes the form of a sale. The

important point to note, however, is that the "sale" under the Pennsylvania Law is merely a means of effecting the merger of corporations. That this fact is important is shown by the case of *Bassick* v. *Commissioner of Internal Revenue*, 85 Fed. (2d) 8 (C. C. A. 2) (certiorari denied 299 U. S. 592), where the Court said: "For Income Tax purposes, the component steps of a single transaction cannot be treated separately."

In *Chicago Santa Fe and California Railway Co.* v. *Ashling*, 160 Ill. 373, 380, 381, 43 N. E. 373-375, the Chicago and St. Louis Railway Co. transferred all of its properties and franchises by deed of conveyance to the appellant. The question before the Court was whether this transaction which was in the form of a sale was not in fact a "consolidation." In holding that the transaction was a "consolidation" and that the defendant was liable for the torts of its predecessor from which it purported to "buy" assets, the Court said:

> "* * * It is true, that what was done must be considered in order to determine whether there was a consolidation or not; but we must look to the results accomplished, rather than to the means, steps or procedure by which those results have been attained.
>
> "* * * *There is no magic in words. Merely calling the transaction a purchase and sale would not prevent it from being a consolidation.* It cannot be supposed, from the nature of this transaction, that it was expected that the St.

> Louis Company should continue its active corporate existence after divesting itself of all its property, corporate rights and franchises and stockholders." (Italics added.)

In *Continental Trust Company* v. *Toledo St. L. & K. C. R. Co.*, 82 Fed. 642, 652, Mr. Chief Justice Taft, then Circuit Judge, considered the effect of an Illinois Statute which provided:

> "That all railroad companies now organized, or hereafter to be organized under the laws of this state, which now or hereafter may be, in possession of and operating in connection with or extension of their own railway lines any other railroad or railroads in this state, or in any other state or states, or owning and operating a railroad which connects at the boundary line of this state with a railroad in another state, *are hereby authorized and empowered to purchase and hold in fee simple* or otherwise and to use and enjoy, the railway property, corporate rights and franchises of the company or companies owning such other road or roads upon such terms and conditions as may be agreed upon between the directors and approved by the stockholders," etc. (Italics added.)

Concerning the effect of this statute the learned Judge said:

> "Although this act uses the word 'purchase,' it plainly contemplates consolidation, and this is the holding in Illinois * * *."

The authorities clearly support the proposition that either a merger or consolidation may be accomplished even though one of the steps in effecting the merger may be a sale. The true test in determining whether or not a certain transaction between two or more corporations constitutes a merger is whether the existence of one of the corporations has been preserved and the others have been swallowed up by or merged in the one that continues in existence.

The "short form" merger under Pennsylvania law meets all the essential legal requirements of a merger, which was defined by Judge Augustus N. Hand in *Cortland Specialty Co. et al.* v. *Commissioner of Internal Revenue,* 60 Fed. (2nd) 937 (1932) (Cert. Den. 288 U. S. 599, 77 L. Ed. 975), as follows:

> "Reorganization, merger, and consolidation are words indicating corporate readjustments of existing interests. They all differ fundamentally from a sale where the vendor corporation parts with its interest for cash and receives nothing more. * * * *A merger ordinarily is an absorption by one corporation of the properties and franchises of another whose stock it has acquired. The merged corporation ceases to exist and the merging corporation alone survives.* A consolidation involves a dissolution of the companies consolidating and a transfer of corporate assets and franchises to a new company. * * * A sale of the assets of one corporation to another for cash without the retention of any interest by the seller in the purchaser is quite outside

the objects of merger and consolidation statutes." (Italics added.)

Following the completion of the transfer by the North Penn Power Company and the Susquehanna County Light and Power Company of all of their assets to the Northern Pennsylvania Power Company in accordance with the provisions of the Act of 1874, as amended, the transferor corporations in the case at bar, in accordance with the express provisions of the statute, ceased to exist and were, in fact, dissolved. Of course, as in all cases of merger or consolidation of corporations, the absorbed corporation continues to exist for the purpose of actions pending against it. This is true of an absorbed corporation under the "long form merger statute" of Pennsylvania by the express terms of Section 423 of that Act, although there is no question that the Act of 1909 is a strict consolidation statute. It is likewise true of a merger under the Act of 1874.

Since under the Pennsylvania law the North Penn Power Company and the Susquehanna County Light and Power Company ceased to exist when they were absorbed by the Northern Pennsylvania Power Company under the Act of 1874, as amended, the transaction in each case was a merger and not a sale.

D. As a Result of a Merger Effected Under the Provisions of the Act of 1874, as Amended, a Transferee Corporation Succeeds by Operation of Law to the Liabilities of the Transferor Corporation.

In its opinion in this case the Circuit Court of Appeals for the Second Circuit in coming to the conclusion that the Pennsylvania "short form merger" constitutes a sale and that creditors of the transferor can hold the transferee liable only on principles of fraudulent conveyance and to the extent of the value of assets received, relies upon the case of *Merwine* v. *Mt. Pocono Light & Improvement Co.*, 304 Pa. 517, 156 A. 150.

In that case the appellant had sued to recover damages for personal injuries. The defendant's attorney filed a suggestion setting forth that the property and franchises of the defendant had been conveyed to the Pennsylvania Power and Light Co. in *proceedings under the Act of 1874, as amended;* they alleged that under the Act the defendant had ceased to exist and therefore prayed that the action against it should be abated. Plaintiff filed an Answer and prayed that a Rule be allowed to show cause why the Pennsylvania Power and Light Company should not be substituted as defendant. The Court below denied the prayer of the plaintiff and abated the action.

On appeal, the Supreme Court of Pennsylvania held that determination of the corporate existence of

the defendant company under the Act of 1874, as amended, did not abate the action.

Counsel for the appellant had contended in his brief (page 518 of Opinion) that "The transaction was a merger, not a sale." In considering this contention the Court said at pages 524-525:

> "Although we need not decide the point, it is proper to call attention to the fact that the pleadings indicate that the Pennsylvania Power & Light Company took over the property of defendant under circumstances warranting a finding, upon evidence produced to support the allegations in the pleadings, *that the transaction between the two corporations was in reality a merger, or such union of interests as, in law, caused the buying corporation to assume defendant's obligations.* There is much to show that the purchase was attended by an intimacy of interest tending to render the transaction, in so far as the Pennsylvania Power & Light Company's interest was concerned, a purchase *cum onere.* For instance, it is averred that, at the time of the commission of the alleged negligent acts on the part of the Mount Pocono Light & Improvement Company, it was affiliated or associated with the Pennsylvania Power & Light Company to the extent that both companies were managed, operated and controlled under the same management and system. It is admitted that the common stock of both companies was owned by the same holding company, and, by defendant's own showing, thirteen of the same persons were officers or directors in both companies. It

> further appears that both companies operated from the same office. Plaintiff states that the business of the Mount Pocono Company was conducted by the agents, servants and employees of the Pennsylvania Power & Light Company; that after the sale, the power company took over and operated the business formerly conducted by defendant; and that the sale was merely a formality giving effect to a union of the companies which had in reality occurred previous to the accident upon which the suit is based." (Italics added.)

Attention is particularly called to that portion of the above statement appearing in italics whereby the court definitely states that a transfer by a corporation (under the procedure prescribed under the Act of 1874, as amended) of its franchises and property to "the buying corporation," with which it is affiliated, is simply a formality and the transfer in reality is a merger of the two companies. All that the Court actually held in the *Merwine* case was that the action brought against the merged subsidiary prior to the merger did not abate, and that if the plaintiff recovered judgment against the Mt. Pocono Company she could "levy where defendant's assets liable for the judgment may be found."

The Circuit Court of Appeals for the Second Circuit stated in its opinion in this case that the transfer of the property of the Mt. Pocono Company to the successor corporation might be set aside as being in fraud of creditors and in that sense only did the successor corporation succeed to the liabilities of the absorbed corporation. This, however, is not the procedure under the law of Pennsylvania.

A Pennsylvania corporation which has acquired the assets of another corporation in accordance with the provisions of the Act of 1874 as amended, succeeds to the liabilities of the transferor, not by reason of any application of the doctrine of fraudulent conveyances, but by reason of the fact that in Pennsylvania such liability is, by operation of law, an inherent part or consequence of a merger.

The Statute of 13 Elizabeth, Chapter 5, dealing with fraudulent conveyance applies to colorable sales made for the purpose of delaying or hindering creditors and it declares such sales to be "utterly void." This Statute has no bearing on mergers or consolidations which are authorized by statute. The transaction in the *Merwine* case and in the case at bar were specifically authorized by the Act of 1874, Section 23, as amended and are therefore lawful and not "utterly void" under the Statute of Elizabeth.

The Statute of Elizabeth may apply to ordinary sales of corporate property such as those referred to in the following cases:

Ringler v. *Atlas Portland Cement Co.*, 301 Pa. 176, 151 A. 815;

Mount Union Borough v. *Kunz*, 290 Pa. 356, 139 A. 118;

Maxler v. *Freeport Bank*, 275 Pa. 510, 119 A. 592;

Koehler v. *St. Mary's Brewing Co.*, 228 Pa. 648, 77 A. 1016;

Carr v. *Rochester Tumbler Co.*, 207 Pa. 392, 56 A. 945.

In *Montgomery-Web Company* v. *Dienelt,* 133 Pa. 585, 19 A. 428, the Court held an ordinary sale of property by a corporation to be void, just as "in the case of an individual, a transfer to his wife or his agent, or anybody who should merely represent himself under another name, would be unquestionably void against creditors."

In cases of ordinary sales in fraud of creditors the creditors may (*a*) pursue the assets in the hands of the new company through judgment against the old company on theory that the sale is void or voidable, or (*b*) by proper proceedings fasten a constructive trust as to such assets on the new company as Trustee (*Halpern* v. *Grabosky,* 296 Pa. 108, p. 112, 145 A. 834), or (*c*) file a bill in equity to discover assets and impose liability upon the theory that equity regards the property as a trust for the payment of existing debts, and will follow it on behalf of creditors until it gets into the hands of innocent purchasers for value (*Montgomery-Web Company* v. *Dienelt,* 133 Pa. 585, p. 596, and *Mt. Union Borough* v. *Kunz,* 290 Pa. 356, p. 362).

In the latter case while the transfer of the water works was made under the Act of 1874, Section 23, as amended, the transaction was an *ordinary sale,* not a *merger,* as the purchase price was $60,000 in cash and other considerations. There was no amalgamation of interests, as there must be in a merger; the old owners divorced themselves from the business.

The Act of 1874, as amended, authorizes out-and-out sales, like the water works sale, or mergers

like that in the *Merwine* case and in the case at bar where the North Penn Power Company and the Susquehanna County Light and Power Company transferred all of their property rights and franchises to the Northern Pennsylvania Power Company in exchange for stock so that the interests of the old companies were amalgamated and merged with those of the surviving corporation. The old companies not only ceased to do business, but by the very nature of the transfer ceased to exist. In so doing the Northern Pennsylvania Power Company took the property of the transferor corporation *cum onere* (*Merwine* v. *Mt. Pocono Land Improvement Company* case, *supra*), although an action pending against the old companies would not abate.

Being a merger under the Pennsylvania law, the transfer of the assets of the absorbed corporations to the Northern Pennsylvania Power Company was not void, having been accomplished in accordance with the statutory provisions of Section 23 of the Act of 1874, as amended. There could be no occasion to file a bill in equity to discover assets, as in the case of a fraudulent conveyance, since there was no concealment requiring the discovery. The transaction was entirely open and above-board and the facts readily ascertainable by all parties in interest.

The Supreme Court of Pennsylvania has held that the remedy of creditors of a *merged* corporation is to follow the assets into the hands of the surviving corporation. Thus in *Berkovitz's Appeal*, 319 Pa. 397, at page 407, the Court said:

> "* * * we have also decided in other cases that creditors of one corporation may follow the property or assets of such corporation into a new corporation *where there has been a merger*, or,

in cases of fraudulent transfer. See Halpern *v.* Grabosky, 296 Pa. 108, 111; Merwine *v.* Mt. Pocono, 304 Pa. 517, 522; Delphia Knitting Mills Co. *v.* Richards, 62 Pa. Superior Ct. 9, 12." (Italics added.)

As the court in the above case pointed out, where there is a merger the creditors of one corporation may follow the property or assets of that corporation into the new corporation. In this respect the remedy is the same as that afforded creditors in the case of a fraudulent transfer. Attention, however, is called to the fact that while the remedial procedure may be the same in the case of a merger as in the case of a fraudulent transfer, the basis for the remedy in one is not the same as the basis for the remedy in the other. A creditor in the case of a merger is given certain remedies as a legal incident of the merger, namely, that the successor corporation is liable for the debts of its predecessor while in the case of a fraudulent transfer by way of sale or otherwise, a creditor is granted equitable relief. In the case of a merger there is no necessity of resorting to equitable principles.

In the case of *Merwine* v. *Mt. Pocono Land Improvement Company, supra,* the Court said that the plaintiff having secured judgment could "*levy* where defendant's assets liable for the judgment may be found." The direction of the Court to "levy" could only mean one thing—the issuance of a writ of *fieri facias* and the seizure by the Sheriff of the property owned by the Mt. Pocono Company and now in the hands of the Pennsylvania Power and Light Company. The Supreme Court of Pennsylvania made this perfectly clear in *Weinroth* v. *Homer B. and L. Association,* 310 Pa. 265, p. 270, where, in referring

to the *Merwine* case it said: "The court there directed plaintiff, if he recovered judgment, to pursue the property of defendant in possession of the merged company." Since the transfer of the property of one corporation to another corporation under the provisions of the Act of 1874, as amended, is authorized by statute, the property upon its transfer is, in fact, the property of the transferee or surviving corporation and cannot either in law or in equity be considered the property of the old corporation. Therefore, to say that upon a merger a creditor of the transferor corporation can pursue the property formerly owned by it into the hands of the merged company can only mean that the merged company acquires the property of a transferor corporation subject to all of its debts and liabilities.

In the case of *Lansdowne Bank & Trust Company (In re Harr)*, 323 Pa. 380, 186 A. 120, the Supreme Court of Pennsylvania said at page 384:

> "The well settled principle applies that where one corporation purchases the business and assets of another, it succeeds to all the other's rights and is bound as well by all its obligations: *Maxler* v. *Freeport Bank et al.*, 275 Pa. 510; *Buist's Estate*, 297 Pa. 537."

There can be no doubt that under the Pennsylvania law when one corporation by merger succeeds to the assets of another, it likewise succeeds to all of the other's rights and is bound as well by all its obligations.

As has already been pointed out, a merger under the Act of 1874, Section 23, as amended, has been considered by the Supreme Court of Pennsylvania as being practically the same as a consolidation under the Act of 1909.

The Act of 1909 (Title 15 Purdon's Statutes, Sections 421-425) contains the following provision:

> "Section 423. Effect of merger * * *
>
> "* * * Provided, That all rights of creditors and all liens upon the property of each of said corporations shall continue unimpaired, limited in lien to the property affected by such liens at the time of the creation of the same, and the respective constituent corporations may be deemed to be in existence to preserve the same; and all debts not of record, duties, and liabilities of each of said constituent corporations shall thenceforth attach to the said new corporation, and may be enforced against it to the same extent and by the same process as if said debts, duties, and liabilities had been contracted by it."

The effect of the decisions in the *Merwine* and other cases above mentioned is to make the law with respect to the rights of creditors of merged corporations identically the same as the statutory rights of creditors of constituent corporations in consolidations effected under the Act of 1909.

It is a general proposition that where a corporation is absorbed by another and transfers its assets in consideration for the shares of stock in the transferee corporation the latter is liable for the debts and liabilities of the former, regardless of whether the transaction takes the form of a strict merger or not. See 15 *Fletcher Cyclopedia Corporations* (Perm. Ed.) Section 7127, 15 A. L. R. 1112, 30 A. L. R. 558, 39 A. L. R. 143. The Pennsylvania cases support this proposition.

Contrary to the opinion of the United States Circuit Court of Appeals for the Second Circuit rendered

in this case, petitioner submits that the law of Pennsylvania gives creditors of a merged or constituent corporation a plain, adequate and complete remedy at law against the surviving or new corporation for the debts and obligations of the absorbed corporation. However, such a right is not a *sine qua non* of a technical merger or consolidation for the reason that it is generally held that if a creditor does not have an adequate remedy at law he may proceed in equity to enforce his rights against merged or constituent corporations. See Section 7170-7171 of *Fletchers Cyclopedia Corporations* (Perm. Ed. Vol. 15).

Whether or not the creditors of a merged or consolidated corporation have the right to enforce their claims at law or in equity is immaterial so long as the successor corporation remains liable for the same. Whether such liability be characterized as an assumption of liability by operation of law or upon the application of equitable principles is immaterial. It is not from what the procedure is called that the assumption of liability flows, but it is the result of the procedure.

Where, therefore, a Pennsylvania corporation merges with or absorbs another corporation, each having substantially the same stockholders, the transfer of the assets from the old corporation to the continuing corporation carries with it by *operation of law* the liability for the debts of the old corporation even though there is no contract or agreement by the continuing corporation to assume such debts. The assumption by operation of law of such liability completely meets the test prescribed in the case of the *American Gas and Electric Company* v. *Commissioner*, 85 Fed. (2d) 527.

In the argument which has here been presented the

petitioner is sustained by the Circuit Court of Appeals for the Third Circuit in passing upon the identical question in the case of *Metropolitan Edison Company* v. *Commissioner,* 98 Fed. 2d 807, and in the case of *The Pennsylvania Water and Power Company* v. *Commissioner,* 98 Fed. 2d 812. In the former case the Court said on page 810 of the Reports:

> "We are convinced that the transactions, by means of which the petitioner absorbed the subsidiaries here involved, partook of all of the essential elements of a merger (Chicago, S. F. & C. Ry. Co. *v.* Ashling, *supra*), and that the petitioner is entitled to the deduction claimed for 1928. Cir., 85 F. 2d 527; *New York Cent. R. Co.* v. *Commissioner,* 2 Cir., 79 F. 2d 247, certiorari denied 296 U. S. 653, 56 S. Ct. 370, 80 L. Ed. 465; *Western Maryland Ry. Co.* v. *Commissioner,* 4 Cir., 33 F. 2d 695; *American Gas & Elec. Co.* v. *U. S.,* 17 F. Supp. 151, Ct. Cl."

IV.

The Transactions in the Case at Bar by Which the Northern Pennsylvania Power Company Acquired the Assets and Liabilities of Other Companies Involve a Change in Form Only and Therefore the Deductions Should be Allowed Irrespective of the Technical Nature of the Transactions.

Since the Northern Pennsylvania Power Company was merged with the North Penn Power Company and the Susquehanna County Light and Power Company under the Pennsylvania Act of 1874 as amended, petitioner contends, for the reasons hereinabove set forth, that the deductions claimed for the unamortized

sorbed companies never sustained or took any loss on account of the unamortized debt discount and expense since such loss could only arise when the bonds were retired. The bonds were actually retired by the Northern Pennsylvania Power Company and unless it is entitled to take the loss, no one obtains the benefit thereof contrary to the express intention of Congress that a corporation which sustains a loss shall be entitled to deduct the same in computing its net taxable income.

The decisions in the cases of *Western Maryland Ry. Co.* and *New York Central R. Co. supra,* sustain the position of the petitioner.

In *Western Maryland Railway Co.* v. *Commissioner,* 33 Fed. (2d) 695 (C. C. A. 4), the question was whether the Western Maryland Railway Co. was entitled to amortize and deduct discount on bonds issued by its predecessor which consolidated with seven subsidiaries, all of whose stock it owned and whose property it operated as its own. The Interstate Commerce Commission required that the unamortized discount be carried on the balance sheet of the consolidating company and amortized over the remaining life of the bonds. The Board of Tax Appeals denied the deduction and the Railway Company appealed.

In reversing the decision of the Board the Court said:

> "We come then to the second question in the case: Has the right to deduct the amortized portion of the discount been lost by reason of the reorganization of the corporation that sold the bonds and the taking over of its assets and liabilities by the consolidated company? We think not. In the first place, it is perfectly clear that, al-

though there has been a reorganization and although the consolidated corporation is a distinct legal entity from those whose places it has taken, nevertheless in all of its essential relationships, it occupies exactly the same position which they occupied. Its management is the same, its assets are the same, its stockholders are the same, and its obligations are the same, except that the floating indebtedness of the old corporation has been taken up by the first preferred stock of the new, a change which might have been effected by the old corporation without reorganization, and which manifestly can have no bearing upon the matter of bond discount. In other words, the consolidated corporation has stepped into the place of the corporation which issued the bonds, and occupies the same relationship towards them that it occupied. It has received no consideration for its agreement to pay them except the assets of the old corporation which have been transferred to it. It has the same property as the old corporation, owes the same bonded debt, and is bound to pay it in the same way. The Interstate Commerce Commission required that the unextinguished discount be carried on the balance sheet of the company and that same be amortized by charge against income for the remaining life of the bonds, just as though no reorganization had taken place; and, the deduction is to be allowed as a basis for rate making and for determining the rights of the government under the recapture clause of the Transportation Act, there is no reason why it should not be allowed in determining the basis of taxation also. *After all, while there is a*

technical legal difference between the old and the new corporations, they are the same as a practical matter, both holding the same property and representing the same ownership, and it is a settled principle that 'courts will not permit themselves to be blinded or deceived by mere forms of law but, regardless of fictions, will deal with the substance of the transaction involved as if the corporate agency did not exist and as the justice of the case may require.' Chicago, Milwaukee & St. Paul R. Co. *v.* Minneapolis Civic Assn., 247 U. S. 490, 501, 38 S. Ct. 553, 557 (62 L. Ed. 1229); Southern Pac. Co. *v.* Lowe, 247 U. S. 330, 38 S. Ct. 540, 62 L. Ed. 1142; Gulf Oil Corporation *v.* Lewellyn, 248 U. S. 71, 39 S. Ct. 35, 63 L. Ed. 133.

"*The rule just stated is of peculiar importance in tax cases; for, unless the courts are very careful to regard substance and not form in matters of taxation, there is grave danger on the one hand that the provisions of the tax laws will be evaded through technicalities and on the other that they will work unreasonable and unnecessary hardship on the taxpayer.* It is instructive to note the many tax cases decided in recent years in which the courts have not hesitated to ignore corporate forms, and to decide the questions involved in the light of what the parties have actually done, rather than on the basis of the forms in which they have clothed their transactions. See Weiss *v.* Stearn, 265 U. S. 242, 44 S. Ct. 490, 68 L. Ed. 1001, 33 A. L. R. 520; U. S. *v.* Phellis, 257 U. S. 156, 42 S. Ct. 63, 66 L. Ed. 180; Eisner *v.* Macomber, 252 U. S. 189, 40 S. Ct. 189, 64 L. Ed. 521, 9

A. L. R. 1570; Gulf Oil Corp. *v.* Lewellyn, *supra;* Alpha Portland Cement Co. *v.* U. S. (C. C. A. 3d), 261 F. 339; Appeals of A. J. Siegel, 4 B. T. A. 186; Appeal of H. E. Brubaker, 4 B. T. A. 1171. *We think, therefore, that as the new corporation, while technically a distinct legal entity, is to all practical intents and purposes a mere continuation of the old, it is entitled to the same deduction on account of amortized bond discount that the old corporation would have been entitled to, if the reorganization had not taken place."* (Italics added.)

It is important to note from the above statement that, although there was a technical legal consolidation in that case, the Court did not base its opinion upon that fact, but upon the fact that the consolidation effected a change in form only and that although the consolidating corporation was technically a different corporation from the issuing corporation, it was "to all practical intents and purposes a mere continuance of the old" and "entitled to the same deduction on account of bond discount that the old corporation would have been entitled to." Indeed the Court continued:

"In the second place, we think that, irrespective of the practical identity of the old and new corporations, petitioner is entitled to the deductions claimed because of having taken over the assets and assumed the liabilities of the old corporation which was unquestionably entitled to it. Among the liabilities of the old corporation as shown by its books was the bond issue; and

among its assets was the amount set up as bond discount, against which was charged each year an amortized portion thereof. In taking over the liabilities and assets, the new corporation took the place of the old as to both of these items. As has been said, bond discount is really deferred interest payable at the maturity of the bonds. When, therefore, the new corporation assumed the obligations of the old, its agreement to pay the bonds at maturity embraced necessarily the agreement to pay this deferred interest, which is included in the face of the bonds. As the new corporation is bound to pay this, there is no reason why it should not amortize it in the same way as the old corporation."

The decision of the Court in the Western Maryland case was approved by the Circuit Court of Appeals for the Second Circuit in *New York Central Railroad Co.* v. *Commissioner*, 79 Fed. (2d) 247, in which the Court said:

"In Western Maryland R. Co. *v.* Commissioner, 33 F. (2d) 695 (C. C. A. 4), it was held that a consolidated corporation steps into the place of the constituent corporations and is entitled to deduct amortized discount on bonds issued by them. We think this decision is sound and should be followed in the case at bar. The consolidated corporation does not succeed to the rights and liabilities of the constituent companies as a purchaser but as a successor by operation of law. See Cortland Specialty Co. *v.* Commissioner, 60 F. (2d) 937, 939 (C. C. A. 2); Commissioner *v.* Oswego Falls Corp., 71 F. (2d) 673.

676 (C. C. A. 2). The assets of the consolidated corporation have the same cost basis as they had when held by the old companies and are subject to the lien of the bond issues. Hence the consolidated corporation will suffer a loss when it pays the bonds at par, and the regulations as to spreading this loss over the life of the bonds should apply. They do not in terms confine discount deductions to the issuing corporation, and should not be construed to do so. If the new corporation cannot take the deduction, no one can, for the old companies sustained no loss when the consolidation was affected. As already stated, the subject of amortization is the difference between the cash realized on the bonds and their par value. This difference the consolidated corporation will pay when the bonds mature, and this expenditure it should be allowed to anticipate by yearly amortization during the life of the bonds in order more clearly to reflect its income.

"* * * * * * *

"The petitioner also claims to be entitled to deduct in each of the taxable years the amount of $29,518.97 discount on bonds of predecessor companies which were merged with the petitioner. The principles above discussed as applicable in case of consolidation are equally applicable to merger. * * *." (Page 250 of opinion.)

Respondent takes the position that the Northern Pennsylvania Power Company, in assuming the bonds of its affiliates, agreed to pay the full face value of the bonds in consideration of the assets being

transferred to it, and that, for this reason, the company received full consideration for its promise to pay the bonds and has suffered no discount.

This argument was effectively answered by the Circuit Court of Appeals for the Fourth Circuit in *Western Maryland Railway Co.* v. *Commissioner,* 33 F. (2d) 695, where the Court said at page 698:

> "It is argued, however, that the new corporation has agreed to pay the full face of the bonds in consideration of the assets transferred to it, and that, for this reason, it has received full consideration for them and has suffered no discount. But this by no means follows. The fact that bonds have been sold at a discount presupposes that the interest rate which they carry is less than the prevailing rate at the time of sale; and it is but fair to assume that this has been taken into account in the price paid or the terms agreed upon for the transfer of the corporate assets. The matter takes care of itself in the case of a reorganization such as this; for it is manifest that, as the discount was mirrored in the affairs of the old corporation by the fact that its actual assets were that much less than they would have been had the discount not been effected, it is mirrored in exactly the same way when the assets pass into the hands of the reorganization. As a man cannot lift himself by his own bootstraps, so a corporation cannot, by a mere process of reorganization, increase its actual assets or wipe out the fact that it is bound to pay bond discount which is in reality deferred interest."

The respondent takes the same position in this case as he did in the case of *New York Central R. Co.* v. *Commissioner,* 79 F. (2d) 247, to the effect that deductions for losses, being personal to the taxpayer who actually sustained them, only the corporation actually issuing the bonds may deduct unamortized debt discount and expense. This contention was rejected and effectively answered by the court in the *New York Central R. Co.* case, *supra,* in its opinion on page 249 of the Reports, as follows:

> "The Commissioner argues that allowable deductions are personal to the taxpayer and cannot be transferred to or used by another. But the cases which announce this doctrine deal with losses sustained by a predecessor and sought to be deducted by a successor. New Colonial Ice Co. *v.* Helvering, 292 U. S. 435, 54 S. Ct. 788, 78 L. Ed. 1348; Brandon Corp. *v.* Commissioner, 71 F. (2d) 762 (C. C. A. 4); May Oil Burner Corp. *v.* Commissioner, 71 F. (2d) 644 (C. C. A. 4); Cem Securities Corp. *v.* Commissioner, 72 F. (2d) 295 (C. C. A. 4); Athol Mfg. Co. *v.* Commissioner, 54 F. (2d) 230 (C. C. A. 1). In the case at bar, no loss was sustained by the issuing corporations in selling their bonds at a discount; the loss will be sustained by the consolidated corporation when the bonds mature and are paid. Hence the deductions here in question are by way of anticipation of the taxpayer's own loss and should have been allowed."

The Circuit Court of Appeals, in the instant case, in sustaining the position of the respondent based its decision upon the theory that the deduction for un-

amortized debt discount and expense on bonds of a predecessor company may be allowed only where the predecessor company was technically merged into the company actually sustaining the loss through payment of the bonds prior to maturity. This argument was apparently based upon the prior decision of the Second Circuit Court of Appeals in *American Gas & Electric Company* v. *Commissioner,* 85 Fed. (2d) 527. We respectfully submit that the decision of the majority of the Court in the *American Gas* case was erroneous and that the correct principle was laid down in the dissenting opinion of Judge Learned Hand. In that opinion, Judge Hand states:

> "If a company keeps its books on an accrual basis and issues bonds at less than par, the discount is immediately incurred, whether one regards it as a loss or an expense. If the books are on a cash basis, the discount is not paid until the bonds are paid. Thus, in either case there is no legal warrant for spreading the deduction over the life of the bonds; the practice which has grown up and is of undoubted validity, is based upon a fiction, following the accountant's device for preparing to meet the burden of paying the discount all at once. Unless this fiction is extended to cover a buyer in 'reorganization' it will be the means of preventing the deduction of a part of what at some time or other is an undoubted loss or expense. The buyer is not a party to the original loan and cannot claim any deduction because of it; it merely buys the assets and pays for them in cash and by a promise to pay the face of the bonds. It is true that that promise includes the discount, but the cash payment presumably is less by that amount, if the bonds bear interest. Certainly the buyer has not suffered any loss, or paid any expense. Nor will

any deduction because of it appear in estimating the buyer's gain or loss, if it sells the assets in whole or in part. True, the buyer's 'basis' is the seller's 'basis,' but if the seller had sold the assets, its 'basis' would not include the discount. It would be the cost of the assets sold; that is, the amount borrowed so far as the proceeds of the bonds had been used to buy them. Therefore, all deduction for the unamortized discount disappears from the computation of the taxes of either buyer or seller, unless the buyer is allowed to complete the amortization deductions. A legal fiction is a good contrivance only if it effects a just result, but there is no excuse for it otherwise; this one must be carried out consistently in order to avoid injustice. There may be difficulties when the books are kept on a cash basis, but when as here they are not, it seems to me that the deductions of which the seller is deprived should enure to the buyer rather than be denied in toto."

We further submit that any rule which recognizes the fiction of amortization, and yet refuses to extend the fiction to its logical result, but rather restricts it in such a way as to deprive a taxpayer of a valid deduction for an actual loss, is based upon the technicalities of form, and neglects the fundamental reasoning expressed in the foregoing dissenting opinion, and also in the opinion of the Circuit Court of Appeals for the Fourth Circuit in the *Western Maryland Railway Company case, supra,* as well as in the opinion of the Circuit Court of Appeals for the Second Circuit itself, in the *New York Central Railway Company case, supra.* The true principle, we believe, should be based upon a judicial recognition of the fact that the payment of the unamortized discount is actually made,

and the loss is actually sustained, by the successor company in all cases where the transfer does not involve an arms-length sale for an independent consideration. If this principle be recognized, the proper rule of law would be that unamortized debt discount and expense, representing either additional interest or loss, should always be allowed to the corporation which actually pays it, except in cases where the circumstances show a reasonable probability that the amount of the additional interest or loss has already been compensated for in one form or another. This rule was clearly recognized by the Court of Claims in *American Gas & Electric Company* (17 F. Sup. 151), wherein it stated:

> "* * * The Securities Corporation acquired the assets of the Virginia Company by the payment of a definite consideration, and we think it is a fair presumption that the price so paid was adjusted to meet the fact that the corporation would have to pay the bonds in full."

In the instant case, this situation does not obtain. Here there was a mere change of form—an absorption of the constituent companies by the Northern Pennsylvania Power Company for a consideration designed merely to take care of the outstanding securities of the constituent companies. This consideration could not possibly have been fixed in relation to the assets transferred, and could not have taken into account the additional interest or loss represented by the unamortized discount and expense on the bonds of the constituent companies.

If in this case consideration had been paid, as in the case of an ordinary sale between corporations, the price so paid for the assets would have been diminished

so as reflect the amount of unamortized bond discount and expense, a purely fictitious asset or balance item on the seller's balance sheet. In such case the loss would have been already "compensated for" within the meaning of the Revenue Act, and, therefore, would not be deductible. Here, however, as has been pointed out, the contrary situation is evident.

Therefore, since it is impossible in the present case to infer that the price paid for the assets received by the Northern Pennsylvania Power Company was adjusted to meet the fact that the company would have to pay the bonds in full, there are no circumstances which require or permit the disallowance of a deduction for additional interest or loss actually paid or sustained by that company, and for which it received no compensation.

It cannot be said either that by claiming the deductions the Northern Pennsylvania Power Company is carrying over a loss sustained by a predecessor corporation such as in the case of *The Pennsylvania Company, etc.* v. *Commissioner,* 75 F. (2d) 719, and similar cases, or that the company is claiming a deduction for a loss which has already been compensated for by being reflected in the purchase price of the assets of the old companies as in *American Gas & Elec. Co.* v. *Commissioner,* 85 F. (2d) 527.

CONCLUSION.

It is not disputed that unamortized debt discount and expense remaining at the time that bonds are retired prior to maturity are allowable deductions for income tax purposes to a successor corporation which, through merger, has carried forward the corporate identity of the issuing corporation and has succeeded,

by operation of law, to its rights and liabilities. It is therefore contended that the deductions claimed by the petitioner's subsidiary, the Northern Pennsylvania Power Company, should be allowed since, under Pennsylvania law, the transactions here involved meet this test.

In any event the deductions claimed should be allowed since the Revenue Act specifically provides that corporations in computing their net income may deduct losses for which they have not been compensated. No loss was sustained in this case by anyone, either directly or indirectly, on account of unamortized bond discount and expense until the bonds were redeemed prior to maturity by the Northern Pennsylvania Power Company which then sustained a loss by reason of the fact that the issuing corporations had merged into it as the successor to all of their assets and liabilities. To deny the loss to the taxpayer will be to defeat the legislative intent.

It is therefore contended that the Circuit Court of Appeals for the Second Circuit erred in refusing to allow the deductions claimed by the petitioner in the consolidated income tax return filed in conjunction with its subsidiary, the Northern Pennsylvania Power Company, for the years 1926 and 1927.

Respectfully submitted,

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JANUARY 16, 1939.

APPENDIX A.

Purdon's Pennsylvania Statutes, Annotated (Permanent Edition), Title 15 (Act of 1909):

"SEC. 421. *Merger authorized; exceptions; exclusive franchise not extended; merger subject to act of 1907.*—It shall be lawful for any corporation, now or hereafter organized under the provisions of any general or special act of Assembly authorizing the formation of any corporation or corporations, to merge its corporate rights, franchises, powers, and privileges with and into those of any other corporation or corporations transacting the same or a similar line of business, so that by virtue of this act such corporations may consolidate, and so that all the property, rights, franchises, and privileges then by law vested in either of such corporations, so merged, shall be transferred to and vested in the corporation into which such merger shall be made: * * *

SEC. 422. *Procedure; joint agreement; approval by stockholders; certificates; approval by governor.*—Said merger or consolidation shall be made under the conditions, provisions, and restrictions, and with the powers, herein set forth; to wit,—

First.—The directors of each corporation shall enter into a joint agreement, under the corporate seal of each corporation, for the merger and consolidation of said corporations: prescribing the terms and conditions thereof, the mode of carrying the same into effect, the name of the new corporation, the number and names of the directors and other officers thereof,

and who shall be the first directors and officers, and their places of residence, the number of shares of the capital stock, the amount or par value of each share, and the manner of converting the capital stock of each of said corporations into the stock of the new corporation, and how and when directors and officers shall be chosen, with such other details as they shall deem necessary to perfect the said consideration and merger; but said agreement shall not be effective unless the same shall be approved by the stockholders of said corporations, in the manner hereinafter provided.

Second.—Said agreement shall be submitted to the stockholders of each of said corporations, at separate special meetings or at any annual meetings, of the time, place and object of which respective meetings due notice shall be given by publication, once a week for two consecutive weeks before said respective meetings, in at least one newspaper in the county or in each of the counties in which the principal office of said respective corporations shall be situate

* * *

SEC. 423. *Effect of merger; new patent; bonus; certificate of reports and payment of taxes.*—Upon the filing of said certificates and agreement, or copy of the agreement, in the office of the Secretary of the Commonwealth, and upon the issuing of new letters patent thereon by the Governor, the said merger shall be deemed to have taken place, and the said corporations to be one corporation under the

name adopted in and by said agreement possessing all the rights, privileges, and franchises theretofore vested in each of them; and all the estate and property, real and personal, and rights of action, of each of said corporations, shall be deemed and taken to be transferred to and vested in the said new corporation, without any further act or deed: Provided, That all rights of creditors and all liens upon the property of each of said corporations shall continue unimpaired, limited in lien to the property affected by such liens at the time of the creation of the same, and the respective constituent corporations may be deemed to be in existence to preserve the same; and all debts not of record, duties, and liabilities of each of said constituent corporations shall thenceforth attach to the said new corporation, and may be enforced against it to the same extent and by the same process as if said debts, duties, and liabilities had been contracted by it. * * *"

APPENDIX B.

Section 23 of the Pennsylvania General Corporation Act of 1874, as amended.

(Purdon's Penna. Statutes, Annotated (Permanent Ed.), Title 15, Section 595.)

"SEC. 595. *Reduction of capital stock; change in value of shares; conveyance of franchise and property.*—Any corporation created under the provisions of this act, and any corporation of the classes named in the second section thereof, that is now in existence by virtue of any law of this Commonwealth, may reduce its capital stock or alter and change the par value of the shares thereof, by a vote of the stockholders taken in the manner and under the regulations prescribed in the eighteenth, nineteenth, twentieth, twenty-first, and twenty-second sections of this act; and it shall be lawful for any corporation in the same manner to sell, assign, dispose of, and convey to any corporation created under or accepting the provisions of this act, its franchises, and all its property, real, personal, and mixed, and thereafter such corporation shall cease to exist, and the said property and franchises not inconsistent with this act, shall thereafter be vested in the corporation so purchasing as aforesaid: *Provided,* That the returns required by said section shall not be filed in the office of the Secretary of the Commonwealth until each and every corporation, so selling, assigning, disposing, and conveying such franchises and property, shall have filed with the Secretary of the Com-

monwealth, a certificate from the Auditor General of the Commonwealth, setting forth that all reports required by the Auditor General of the Commonwealth have been duly filed to the date of the proposed sale, assignment, disposition, and conveyance; and that all taxes due the Commonwealth of Pennsylvania have been paid up to and including such date. * * * (1874, April 29, P. L. 73, Sec. 23; 1876, April 17, P. L. 30, Sec. 5; 1915, June 2, P. L. 724, Sec. 1; 1931, June 12, P. L. 561, Sec. 1)."

APPENDIX C.

Revenue Act of 1926, c. 27, 44 Stat.:

"SEC. 200. (d) The terms 'paid or incurred' and 'paid or accrued' shall be construed according to the method of accounting upon the basis of which the net income is computed under section 212 or 232. The deductions and credits provided for in this title shall be taken for the taxable year in which 'paid or accrued' or 'paid or incurred,' dependent upon the method of accounting upon the basis of which the net income is computed under section 212 or 232, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period.

* * * * * * *

SEC. 212. (b) The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. * * *

* * * * * * *

SEC. 234. (a) In computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity;

(2) All interest paid or accrued within the taxable year on its indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from taxation under this title;

* * * * * * *

(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise."

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Nos. 492-493

In the Supreme Court of the United States

OCTOBER TERM, 1932

GENERAL GAS AND ELECTRIC CORPORATION, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT

In the Supreme Court of the United States

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We do not oppose the granting of writs of certiorari in these cases.

The petition alleges a direct conflict between the decisions in the present cases and *Metropolitan Edison Co.* v. *Commissioner*, 98 F. (2d) 807 (C. C. A. 3d), and *Pennsylvania Water & Power Co.* v. *Commissioner*, 98 F. (2d) 812 (C. C. A. 3d). On November 23, 1938, the Government filed a petition for writs of certiorari in the latter cases, Nos. 486 and 487 of the present term.

We believe there is a conflict between these cases, and accordingly do not oppose certiorari in the present cases.

Respectfully submitted.

ROBERT H. JACKSON,
Solicitor General.

DECEMBER 1938.

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CHARLES ELMORE CROPLEY

Nos. 492 and 493

In the Supreme Court of the United States

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BRIEF FOR THE RESPONDENT

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BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The memorandum opinion of the Board of Tax Appeals in these cases (No. 492, R. 102–108; No. 493, R. 110–116) is unreported. The opinion of the Circuit Court of Appeals (No. 492, R. 117–121; No. 493, R. 125–129) is reported in 98 F. (2d) 561.

JURISDICTION

The judgments of the Circuit Court of Appeals in the two cases were entered September 1, 1938.

(No. 492, R. 123; No. 493, R. 131.)[1] A single petition for writs of certiorari in the two cases was filed December 1, 1938, and was granted January 3, 1939. (No. 492, R. 124; No. 493, R. 132.) The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

On different dates in 1926, the petitioner's affiliate, the Northern Pennsylvania Power Company, a Pennsylvania corporation, acquired all of the assets of two of its subsidiaries, the North Penn Power Company and the Susquehanna County Light and Power Company, both Pennsylvania corporations, in consideration of the assumption of the liabilities of the subsidiaries and for certain additional consideration. The transfers were both carried out pursuant to Section 595, Title 15, of Purdon's Pennsylvania Statutes. In 1926 and 1927, the transferee redeemed at a premium certain bonds of the transferors which had been issued at a discount. Consolidated returns were filed by the transferee and the petitioner for 1926 and 1927. The question is whether there may be deducted in those returns such portion of the bond discount and expense incurred upon the is-

[1] The opinion was rendered July 18, 1938 (No. 492, R. 117; No. 493, R. 125), but the records do not disclose that judgments were entered until the petition for rehearing was denied (No. 492, R. 123; No. 493, R. 131).

suance of the bonds as had not been amortized at the time of their redemption.

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved are set forth in the Appendix, *infra*, pp. 31–35.

STATEMENT

The facts in these cases were stipulated. Those material to the issues here involved as stipulated and found by the Board of Tax Appeals are substantially as follows:[2]

The petitioner, a Delaware corporation, was engaged, at all times material to these proceedings, in the business of holding securities and thus controlling public utility subsidiaries. (R. 103.)

For the years 1926 and 1927, the petitioner and its affiliated corporations, which included the Northern Pennsylvania Power Company and the Susquehanna County Light and Power Company, filed consolidated income tax returns. By agreement, the total tax liability of the affiliated group is to be assessed against and paid by the petitioner. (R. 103, 106.)

In 1926, the Northern Pennsylvania Power Company (hereinafter called the Northern Power Company) acquired all of the assets and assumed all of the liabilities of the North Penn Power Company, a Pennsylvania corporation (hereinafter called the North Penn Company). This transfer was ef-

[2] Unless otherwise indicated, all references to the record will be understood as referring to the record in No. 492.

fected under the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876 (Purdon's Pennsylvania Statutes, Title 15, Sec. 595, Appendix, *infra*, p. 33), and was referred to as a sale in the resolutions of the board of directors of the corporations involved, in the application to the Public Service Commission and in the Commission's orders. (R. 103, 108.) Besides agreeing to assume the liabilities of the North Penn Company, the Northern Power Company, as additional consideration for the transfer, paid cash sufficient to retire the preferred stock of the North Penn Company and exchanged common stock for common stock of the North Penn Company. (R. 103.)

Among other liabilities of the North Penn Company which the Northern Power Company assumed was the liability on certain First Mortgage Thirty Year 6% Sinking Fund Gold Bonds, due February 1, 1953, which had been issued by the North Penn Company in 1923 at a discount, and which constituted a prior lien on the assets transferred. (R. 103.) The principal amount of the bonds outstanding on the date of the transfer was $552,700. (R. 103.) The unamortized debt discount and expense incurred upon the issuance and sale of the bonds were transferred as a deferred charge asset on the books of the Northern Power Company. (R. 104.)

The trust agreement under which the bonds were issued provided that they might be called and re-

deemed at 105% of the principal amount on any interest date up to February 1, 1933. (R. 103.)

Later in 1926 the Northern Power Company retired a portion of these bonds in the principal amount of $368,900 at 105% plus accrued interest. In 1927 it retired the remaining bonds in the principal amount of $183,800 at the same price. (R. 103.)

On or about June, 1926, the Northern Power Company acquired all of the assets of the Susquehanna County Light & Power Company, a Pennsylvania company organized in 1913 (hereinafter called the Susquehanna Company). (R. 63.) This transfer was effected pursuant to the same Pennsylvania statute as the North Penn transfer, and like that transfer, was characterized as a sale in all of the documents relating to the transaction, and had the approval of the Public Service Commission of Pennsylvania. (R. 103–104, 108.) The consideration for the transfer, in addition to the assumption by the Northern Power Company of the liabilities of the Susquehanna Company, was preferred and common stock of the Northern Power Company issued in exchange for the surrender of stock, consisting only of common, of the Susquehanna Company. (R. 103–104.)

Among the liabilities assumed by the Northern Power Company was the liability upon certain First Mortgage 6% Gold Bonds due December 15, 1943, issued by the Susquehanna Company in 1912 at a discount. These bonds constituted a prior

lien on the assets transferred. The unamortized discount and expense incurred by the Susquehanna Company in issuing these bonds was transferred as a deferred charge asset to the books of the Northern Power Company. (R. 103, 104.)

The trust agreement under which the bonds were issued provided that they might be called and redeemed at 105% of their face value. On July 23, 1926, the Northern Power Company redeemed all of the outstanding bonds in the principal sum of $600,000 at that price. (R. 103, 104.)

The funds for the retirement of the North Penn Company bonds and the Susquehanna Company bonds were obtained from the sale in 1926 of $1,950,000 principal amount of Northern Power Company first and refunding bonds, Series A, due June 1, 1956. (R. 104.)

At the time of the retirement of $368,900 of the North Penn bonds in 1926 and of the retirement of $183,800 of that company's bonds in 1927, the balances of the unamortized debt discount and expense applicable thereto were $47,058.08 and $23,441.71, respectively. (No. 492, R. 63; No. 493, R. 76.) Those items were not taken as an expense on the books of the Northern Power Company, but were transferred to debt discount and expense applicable to the refunding issue. (R. 104.) In the consolidated return for 1926, the Northern Power Company claimed a deduction of $587.40 for amortization of bond discount and expenses incurred in the issuance and sale of the Susquehanna

Company bonds. On its books it did not treat as an expense the unamortized debt discount and expense of $19,922.11, which remained when the bonds were redeemed later in 1926. (No. 492, R. 64–65; No. 493, R. 76.)

It does not appear from the record whether either the North Penn Company or the Susquehanna Company was ever dissolved nor does it appear whether their stock was ever actually surrendered for cancellation.

Before the Board of Tax Appeals it was contended that the petitioner's affiliate, the Northern Power Company, was entitled to deductions for 1926 and 1927 for unamortized discount and expense on the North Penn bonds in the aggregate amounts of $47,058.08 and $23,441.71, respectively, and that for 1926 it was entitled to deduct $19,922.11 representing unamortized bond discount and expense with respect to bonds issued by the Susquehanna Company. (R. 107.)

The Board of Tax Appeals sustained the Commissioner on these issues and determined deficiencies of $24.21 and $3,164.80 for 1926 and 1927, respectively. (No. 492, R. 109; No. 493, R. 117.)

Upon appeal the Circuit Court of Appeals affirmed the Board's decision.

SUMMARY OF ARGUMENT

This case presents the same question that is involved in *Helvering* v. *Metropolitan Edison Company* and *Helvering* v. *Pennsylvania Water &*

Power Company, now pending before this Court on writs of certiorari to the Circuit Court of Appeals for the Third Circuit, Nos. 486 and 487, present Term. There is no difference in the applicable statutes and regulations involved, and we believe that there are no material differences in the facts. The question in all three cases is whether a Pennsylvania corporation which redeems at a premium, before maturity, bonds issued at a discount by a Pennsylvania subsidiary whose assets the parent has acquired and whose liabilities it has agreed to assume, may deduct the unamortized discount and expenses incurred by the subsidiary in issuing the bonds. In each instance, except with respect to one issue of bonds involved in the *Metropolitan Edison* case, the agreement to acquire the assets and assume the liabilities of the subsidiary was made pursuant to Section 595, Title 15, of Purdon's Pennsylvania Statutes (Appendix, *infra,* p. 33).

The decided cases established the general rule that only the corporation which issues bonds may deduct amortization of bond discount and expense, and that a corporation which has acquired the assets and agreed to assume the liabilities of the corporation which issued the bonds may not do so. The only recognized exception to the rule occurs in cases where there has been a true merger or consolidation, the life of the corporation issuing the bonds continuing in the successor and the successor

becoming liable for the debts of the issuing corporation by operation of law. In such cases only has the successor been allowed the deduction.

For reasons stated at some length in our brief in Nos. 486 and 487, this case does not come within the exception. Section 595 relates to sales and not to mergers. Moreover, it does not make the purchaser liable for the seller's debts by operation of law, and the decisions of the Pennsylvania courts construing that section do not hold that it does; nor is the selling corporation continued in existence within the purchaser under that statute.

The applicable statutes and regulations do not warrant a broadening of the exception to include this case. The transferee is a different taxable entity from the corporation issuing the bonds and is not entitled to the deductions which its predecessor might have claimed, had the predecessor continued in existence. On the other hand, the transferee as a separate entity, has sustained no loss measured by the unamortized bond discount and expense.

There were no mergers in this case, even within the definitions on which the petitioner relies. But if for some purposes the transfers of assets under Section 595 may be referred to as mergers, they did not have the effect of making the purchaser liable for the debts of the seller by operation of law, and did not continue the existence of the seller within the purchaser. Hence the purchaser cannot be re-

garded as the same corporation which issued the bonds.

Contrary to the petitioner's contentions, the Pennsylvania decisions clearly establish that the purchaser under that statute is not liable to creditors of the seller unless it may be held liable upon the principle of a fraudulent conveyance. A liability which does not arise from the mere fact of a transfer under Section 595, but arises only in the case of a fraudulent transfer, is not a liability created by operation of law within the meaning of the narrow exception to the rule that the transferee may not deduct amortization of bond discount and expense incurred by its predecessor.

ARGUMENT

THE PETITIONER'S AFFILIATE, THE NORTHERN PENNSYLVANIA POWER COMPANY, MAY NOT DEDUCT AMORTIZATION OF BOND DISCOUNT AND EXPENSES WITH RESPECT TO BONDS ISSUED BY OTHER CORPORATIONS WHOSE ASSETS IT ACQUIRED AND WHOSE LIABILITIES IT ASSUMED BY AGREEMENT

This case presents the same question that is involved in the cases of *Helvering* v. *Metropolitan Edison Company* and *Helvering* v. *Pennsylvania Water & Power Company*, now pending before this Court on writs of certiorari to the Circuit Court of Appeals for the Third Circuit, Nos. 486 and 487, present Term. The question in all three cases is whether a Pennsylvania corporation which redeems at a premium before maturity bonds issued at a discount by a Pennsylvania subsidiary whose assets

the parent has acquired and whose liabilities it has agreed to assume, may deduct the unamortized discount and expenses incurred by the subsidiary in issuing the bonds. In each instance, except with respect to one issue of bonds involved in the *Metropolitan Edison* case, the agreement to acquire the assets and assume the liabilities of the subsidiary was made pursuant to Section 595, Title 15, of Purdon's Pennsylvania Statutes (Appendix, *infra*, p. 33). In this case the court below held that the transferee was not entitled to the deduction. In the *Metropolitan Edison Company* case and the *Pennsylvania Water & Power Company* case the Circuit Court of Appeals for the Third Circuit held that the deduction was allowable.

In our brief in Nos. 486–487 we have pointed out that the decided cases establish the general rule that only the corporation which issues the bonds may deduct amortization of bond discount and expense and that a corporation which has acquired the assets and agreed to assume the liabilities of the corporation which issued the bonds may not do so. *Turner-Farber-Love Co.* v. *Helvering*, 68 F. (2d) 416 (App. D. C.); *American Gas & Elec. Co.* v. *Commissioner*, 85 F. (2d) 527 (C. C. A. 2d); *American Gas & Electric Co.* v. *United States*, 17 F. Supp. 151 (C. Cls.). We have further pointed out that the only recognized exception to the rule is that when there has been a true merger or consolidation, the life of the corporation issuing

the bonds continuing in the successor and the successor becoming liable for the debts of the issuing corporation by operation of law, the successor has been allowed the deduction. *American Gas & Elec. Co.* v. *Commissioner, supra; American Gas & Electric Co.* v. *United States, supra; New York Cent. R. Co.* v. *Commissioner,* 79 F. (2d) 247 (C. C. A. 2d), certiorari denied, 296 U. S. 653; *Western Maryland Ry. Co.* v. *Commissioner,* 33 F. (2d) 695 (C. C. A. 4th).

In Point I of our brief in Nos. 486 and 487 we took the position that those cases did not come within the exception for the reason that Section 595 does not require, and the decisions of the Pennsylvania courts construing that section do not hold, that the purchaser becomes liable for the seller's debts by operation of law; and for the further reason that under that section existence of the seller is not continued within the purchaser.

In Point II of that brief we made the point that the exception should not be broadened to include cases where a successor corporation acquires the assets and assumes the liabilities of its predecessor without effecting a merger or consolidation having the incidents just described, for reasons which may be summarized as follows: (1) the statute and regulations in terms permit the deduction only to the corporation issuing the bonds; (2) the successor corporation in such a case is a different entity, not entitled to the deductions which its predecessor

might have claimed; (3) the successor as a separate entity has sustained no loss measured by the unamortized bond discount and expense.

The arguments in those cases apply equally to this case.

In this case the transferor corporation claiming the deduction is not the petitioner itself but its affiliate, the Northern Power Company, which in 1926 acquired the assets of two of its subsidiaries, the North Penn Company and the Susquehanna Company, and agreed to assume their liabilities. (R. 102–103.) Both transfers were effected pursuant to Section 595. (R. 104–105.) The consideration for the transfer of the assets of the North Penn Company was the assumption of its liabilities by the Northern Power Company, cash for the retirement of the North Penn Company's preferred stock, and the issuance of common stock of the Northern Power Company in exchange for the North Penn Company's common stock. (R. 103.) The consideration for the transfer of the Susquehanna Company's assets was the assumption of that company's liabilities by the Northern Power Company and preferred and common stock of the Northern Power Company which was exchanged for common stock of the Susquehanna Company. (R. 103–104.) In 1926 the Northern Power Company redeemed at a premium before maturity bonds of the Susquehanna Company in the principal amount of $600,000. (R. 103–104.) In 1926 and

1927 the Northern Power Company also redeemed at a premium before maturity bonds of the North Penn Company in the principal amounts of $368,900 and $183,800, respectively. (R. 103.) The bonds of the Susquehanna Company and the North Penn Company had been issued at a discount and those companies had incurred certain expenses in issuing them. (R. 103.) The petitioner claims a deduction for the portion of discount and expense not previously amortized in the consolidated returns for 1926 and 1927 filed in behalf of itself and other affiliated corporations, including the Northern Power Company. (R. 103, 107.) The deductions claimed with respect to the North Penn Company bonds are $47,058.08 for 1926 and $23,441.71 for 1927. (R. 107.) The deduction claimed with respect to the Susquehanna Company bonds is $19,922.11 for 1926. (R. 107.)

This case arises under the Revenue Act of 1926, whereas the *Metropolitan Edison Company* case involves both the Revenue Act of 1926 and the Revenue Act of 1928; and there are no differences in the applicable provisions. Nor are there any apparent material differences in the facts in this case and those involved in the *Metropolitan Edison* case and the *Pennsylvania Water & Power Company* case, except in so far as the former involves the claimed deduction with respect to bonds issued by the Metropolitan Power Company, the assets of which company were not acquired pursuant to the Pennsylvania statute.

It is true that in those cases the only consideration given for the assets transferred was the agreement of the transferee to assume the debts of the transferor and to surrender the stock of the transferor for cancellation; whereas in these cases the transferee, as additional consideration, also exchanged its stock for stock of the transferors.[3] We do not believe that that distinction affects the case in any way. It should also be noted that in this case the deduction is claimed in the consolidated returns by the petitioner's affiliate and not by the petitioner itself; but, that distinction also is unimportant.

Most of the petitioner's contentions are answered in our brief in Nos. 486 and 487, and we incorporate Points I and II of that brief herein by reference, and will serve copies on opposing counsel. In addition, however, we wish to reply to certain specific arguments of the petitioner in this case.

The petitioner argues that transfers effected under Section 595 are mergers (1) because the term "merger" is properly defined as "the uniting of two or more corporations by the transfer of property to one of them, which continues in existence, the others being merged therein," citing 15 Fletcher Cyclopedia Corporations (Perm. Ed.),

[3] The record fails to disclose whether the stock of the transferors was ever subsequently surrendered for cancellation in these cases or whether the transferors were ever dissolved.

Sec. 7041, pp. 7–8, and 8 Thompson on Corporations (Third Ed.), Sec. 6012, p. 66; and (2) because the Pennsylvania cases hold that a merger may be accomplished under Section 595, citing *Penna. Utilities Com.* v. *Pub. Serv. Co.*, 69 Pa. Super. Ct. 612; *Y. Hav. W. & P. Co.* v. *Pub. Serv. Com.*, 287 Pa. 241.

In reference to the first argument, we take the position that even under the above-quoted definition of merger, there were no mergers in this case, but that in any event the problem here is not resolved by determining that transfers under Section 595 come within the terms of that definition.

The petitioner argues that under the quoted definition the essential characteristic of a merger is that the corporation which disposes of its assets must cease to exist as an independent corporation. The argument assumes that that is true with respect to transfers of assets effected under Section 595. Section 595 does provide that after a corporation has disposed of its franchises and assets to another corporation, those franchises and assets shall vest in the purchaser and the seller shall "cease to exist." But, as the court below pointed out, in *Merwine* v. *Mt. Pocono Light & Imp. Co.*, 304 Pa. 517, the Supreme Court of Pennsylvania held (pp. 521–522) that the phrase "cease to exist" in Section 595 referred primarily to a cessation of carrying on the business for which the selling corporation was created, and the court stated that the

defendant corporation in that case not having been legally dissolved, its condition was rather that of an inactive corporation than of one altogether dead. Upon that theory it permitted the corporation which had sold its assets to be sued. The decision in that case, therefore, establishes that a sale of assets under Section 595 does not automatically terminate the corporate existence of the seller and that the seller continues separately in existence until it is dissolved. If, therefore, it be essential to a merger that the transferor automatically lose its independent existence upon the transfer, a transfer under Section 595 does not accomplish that result. It is evident from the decision in the *Mt. Pocono* case that Section 595 does not itself "merge" the seller in the purchaser. Without such a merging one of the requirements of the definitions cited by the petitioner is absent. True mergers cannot be effected without the authority of state law, and the authority to merge must be clearly expressed. See 15 Fletcher Cyclopedia Corporations, Sec. 7048, p. 26.

But we submit that under the decided cases the question is not whether a transfer effects what for some purposes or within certain definitions may be termed a merger or consolidation, but whether it effects a merger or consolidation which has the effect of making the transferee liable by operation of law for the debts of the transferor and of preserving the existence of the transferor in the trans-

feree. *American Gas & Elec. Co.* v. *Commissioner, supra; American Gas & Electric Co.* v. *United States, supra.* If it be true that to constitute a merger for any purpose the transferor must automatically lose its independent existence as a separate corporation, for the purpose of the question here involved it is required in addition that its existence must at the same time be continued in the transferee. For that reason it is not enough to bring transfers under Section 595 within a general definition of the term "merger".

For the same reason it is unimportant that there are Pennsylvania cases which have loosely referred to transfers under Section 595 as mergers. An examination of those cases indicates that in making such references the court was thinking of mergers of franchises under Section 595 rather than of mergers of corporations. Thus in *Y. Hav. W. & P. Co.* v. *Pub. Serv. Com.*, 287 Pa. 241, the transfer of assets had been attempted not under Section 595 but under the regular merger and consolidation statute. The Public Service Commission refused to approve the transfer upon the ground that an electric light and power company had no authority to merge with a hydro-electric or water power company. The court held that since the vendor had power under its charter to supply water, as well as to develop electric power for commercial purposes, and since the vendee had no power under its charter to supply water, the merger could not

be effected until the power to supply water was surrendered by the vendor. In the course of its decision the court said that a transfer would also have been prohibited if the transaction were made pursant to Section 595, for the reason that that statute also provided that the purchaser could not acquire franchises inconsistent with its charter. It was in that connection that the court made the following statements relied upon by the petitioner (pp. 246, 249):

> There are two forms of consolidation in Pennsylvania, a short and a long form merger. These are accomplished by the Act of 1876, as amended, and the Act of 1909. The Act of 1876, P. L. 33, as amended, provides that such sale may take place if the "franchises are not inconsistent" with this act. And the merger Act of 1909, P. L. 408, permits consolidation between corporations "transacting the same or similar lines of business."
>
> * * * * *
>
> A sale or merger, under the Act of 1876, with its amendment, or the Act of 1909, which is practically the same, cannot take place until the company legally discards the offending power.

It will be noted that the word "sale" as well as the word "merger" was used in the above-quoted excerpts from the court's opinion. But irrespective of that fact, we think it is clear that all the court meant by these *dicta* in reference to Section

595 was that a corporation could not acquire franchises inconsistent with its charter, either by a transfer under Section 595 or by a merger effected under the regular merger statute. It did not hold that for all purposes the two statutes were similar. Its decision is comparable to the decision in *Hey* v. *Springfield Water Co.*, 207 Pa. 38, where the court referred to Section 595 not as effecting a merger of corporations but as effecting a merger of franchises.[4]

It was with respect to the same problem as to acquisition of franchises that it was said in *Penna. Utilities Co.* v. *Pub. Serv. Com., supra,* that (p. 615):

> As a legal consequence the purchase act differs but little from the merger act which is used to some extent to consolidate companies.

In many other Pennsylvania decisions transfers under Section 595 have been referred to as sales. *Greensburg Boro.* v. *W. Water Co.*, 240 Pa. 481; *Koehler* v. *St. Mary's Brew. Co.*, 228 Pa. 648; *Carr* v. *Rochester Tumbler Co.*, 207 Pa. 392; *Maxler* v.

[4] That is probably what Special Deputy Attorney General Stockley had in mind when he made the statement attributed to him in the petitioner's brief (p. 17). According to the petitioner, he stated that Section 311 of the Act of May 5, 1933 (P. L. 383), which authorizes sales of assets but not of franchises, does not have the effect of a merger similar to that formerly authorized by Section 23 of the Corporation Act of 1874, as amended.

Freeport Bank, 275 Pa. 510; *Ringler* v. *Atlas Portland C. Co.*, 301 Pa. 176; *Buist's Estate*, 297 Pa. 537. The opinion in the latter case was written by the judge who had previously written the opinion in the *Y. Hav. W. & P. Co.* case, *supra*.

Nor is the petitioner's suggestion correct that such transfers have been characterized as sales only where the consideration was to be paid in cash. In *Koehler* v. *St. Mary's Brew. Co.*, *supra*, the consideration for the transfer was the assumption of liabilities of the transferor and bonds of the purchaser, and minority stockholders sought to enjoin the sale upon the ground that it was a fraudulent conveyance because of the inadequacy of the price. The court held that under Section 595 a corporation had the absolute right to sell its assets for a price fixed by the corporation by vote of the majority stockholders and that even if the price were inadequate, the minority stockholders could not enjoin the sale, though under the Pennsylvania law they were entitled to be paid in cash for their shares of stock.

But as we have stated, even if the decisions of the Pennsylvania courts consistently referred to transfers effected under Section 595 as mergers, it would not determine the issue in this case. The question is whether the transfer, whether called a merger or not, has the effect of making the purchaser liable for the debts of the seller by operation of law and of preserving the continuity of the seller's exist-

ence within the purchaser so that there is justification for the theory that the corporation claiming the deduction is the corporation that issued the bonds, and hence is entitled to the deduction.

The petitioner cites *Lansdowne Bank & Trust Co.'s Case*, 323 Pa. 380, as authority for the view that Section 595 does require the purchaser to assume the debts of the seller. But that case involved a transfer of assets from one bank to another and Section 595 does not apply to such transfers. See *Maxler* v. *Freeport Bank*, 275 Pa. 510. In the *Lansdowne* case, the purchasing bank had taken over all of the deposits and agreed to assume the liabilities and obligations of the selling bank, and the issue decided was whether the purchaser was required to furnish a bond to a certain school district before receiving any of its deposits. In holding that it was the court did state that where one corporation purchases the business and assets of another, it succeeds to all the other's rights and is bound as well by its obligations; but it made that statement with reference to a case where liabilities were actually assumed by agreement and must be deemed to have intended its phrase (p. 385) "purchases the business and assets" to reflect that limitation. In any event, Section 595 was not involved, and whatever the court said has no application to sales made pursuant to that section.

Section 595 does not provide that the purchaser shall be liable for the debts of the seller. It leaves

the parties free to fix the terms of the contract. See *Koehler* v. *St. Mary's Brew. Co.*, 228 Pa. 648. No Pennsylvania court has held otherwise, and in *Merwine* v. *Mt. Pocono Light & Imp. Co., supra,* where there had been a transfer of assets under Section 595, the court refused to direct the substitution of the purchaser as a defendant in a suit against the seller for damages for personal injuries and held that the proper course was to sue the seller. This result would have been wholly unjustified if under Section 595 the purchaser became liable for the debts of the seller by operation of law.

It is true that in that case, after holding that the proper course was to sue the seller, the court intimated but did not decide that the pleadings laid a basis for proof which, if adduced might justify findings which would give the judgment-creditor the right of realization against the transferred assets in the hands of the transferee. From the allegations to which it referred as laying a basis for such proof, as well as from the discussion of the trust fund doctrine which preceded the mention of this possible liability, it is clear that the court meant that the transferee might be subsequently determined to be liable upon the principle of a fraudulent conveyance.[5] If the statute created the liability no proof of the circumstances of the transfer would have been necessary. The court in

[5] See discussion of that case in *Weinroth* v. *Homer B. & L. Assn.*, 310 Pa. 265.

the *Mt. Pocono* case concluded its statement on that subject as follows (p. 523):

> Whatever the liability of the Pennsylvania Power & Light Company may or may not prove to be, we pass that point and note that the proper course at the present state of proceedings requires plaintiff first to proceed to judgment against defendant if she can, and, having secured judgment, to levy where defendant's assets liable for the judgment may be found.

By the latter statement the court referred to one method by which a creditor may proceed in the case of a fraudulent conveyance. The statute of 13 Elizabeth, c. 5, is in force in Pennsylvania as a part of the common law of that State (Purdon's Pennsylvania Statutes, Annotated (Permanent Ed.), Title 39, p. 262). See also *Golder* v. *Bogash* (*Tr. Co. of Phila.*), 325 Pa. 449. In addition, a Uniform Fraudulent Conveyance Act was enacted May 21, 1921 (P. L. 1045), Purdon's Pennsylvania Statutes, Annotated (Permanent Ed.), Title 39, Secs. 351–360. Section 359 provides that in the case of a fraudulent conveyance or obligation the creditor may have the conveyance set aside or the obligation annulled to the extent necessary to satisfy his claim or may disregard the conveyance and attach or levy execution upon the property conveyed. The claimant in the *Mt. Pocono* case, *supra*, was a creditor within that definition of the term in that statute. See Section 351.

Under those statutes the creditor may pursue various courses of action. He may by proper proceedings in equity fasten a constructive trust as to the debtor's assets on the successor as trustee, with liability to account for such assets. *Peoples Sav. & Dime Bk. & T. Co.* v. *Scott*, 303 Pa. 294; *Halpern* v. *Grabosky*, 296 Pa. 108. He may in case of concealment file a bill in equity to discover assets and impose liability. *Mount Union Borough* v. *Kunz*, 290 Pa. 356. Where real estate is involved, he may also secure a judgment against the debtor; cause execution to be levied on the debtor's interest in the transferred real estate; acquire title by purchase at the subsequent sale; and bring an action of ejectment against the transferee to test whether there was a fraudulent conveyance. *Hyde* v. *Baker*, 212 Pa. 224; *Sauber* v. *Nouskajian*, 286 Pa. 449; *Conemaugh I. W. Co.* v. *Delano C. Co.*, 298 Pa. 182; *Penna. Trust Co.* v. *Schenecker*, 289 Pa. 277.[4]

But none of those remedies would avail the claimant anything unless he could prove fraud. See *Koehler* v. *St. Mary's Brew. Co.*, *supra*. It was not available merely because there had been a transfer under Section 595. The mere fact that proof of fraudulent circumstances was necessary indicates

[4] Sometimes after the creditor has sued the debtor, secured judgment, and levied execution, the transferee of the assets levied upon claims them and the issue as to whether there was a fraudulent conveyance is decided on the sheriff's interpleader. *Delphia K. M. Co.* v. *Richards*, 62 Pa. Superior Ct. 9.

that the transfer under Section 595 does not in itself create the liability.

The petitioner argues that the statutes relating to fraudulent conveyances do not apply where there is a transfer under Section 595 except in the case of sales for cash, but it cites no authority in support of that view. In *Mount Union Borough* v. *Kunz, supra,* the consideration for a transfer effected under Section 595 was partly cash and partly assumption of indebtedness. The court recognized that the creditor might have had a remedy in equity against the transferee if the conveyance was fraudulent although that was not merely a cash transaction. See also *Koehler* v. *St. Mary's Brew. Co., supra.* In *Berkovitz's Appeal,* 319 Pa. 397, where one bank acquired the assets of another, (a transaction which does not come under Section 595) the court, without saying whether or not there was a merger or merely a sale, stated that it was settled that the creditors of a corporation might follow the assets of another into a new corporation where there had been a merger, *or in cases of fraudulent transfer,* citing *Halpern* v. *Grabosky, supra; Merwine* v. *Mt. Pocono Light & Imp. Co., supra;* and *Delphia K. M. Co.* v. *Richards, supra.*

In the light of the Pennsylvania statutes and decisions just discussed, we submit that there can be no question but that in referring to a possible liability of the transferee as a purchaser *cum onere,* the court in the *Mt. Pocono* case meant that it might

be liable under the principles applicable to fraudulent conveyances if proof of appropriate facts were adduced. It seems clear from the fact that such proof was necessary that the transferee was not liable merely by virtue of the uncontested fact of the transfer of assets under Section 595.

The petitioner says (Br. 30–31) the court in the *Mt. Pocono* case stated that a transfer of assets by a corporation to an affiliated corporation is simply a formality and the transfer in reality is a merger of the two companies. We submit that the opinion cannot be so construed. If the court in that case had meant that a sale of assets by a corporation to its parent under Section 595 effected a merger which made the transferee liable for the debts of the transferror by operation of law, it would have directed the transferee to be substituted as a party defendant. Its refusal to do so can only be explained upon the theory that in stating that the pleadings laid a foundation for evidence and findings that (p. 524) "the transaction between the two corporations was in reality a merger, or such union of interests as, in law, caused the buying corporation to assume the defendant's obligations", the court had in mind a different kind of liability. That conclusion is strengthened by the court's direction to the claimant to proceed to judgment against the defendant (the transferor) and having secured judgment to levy upon its assets wherever they could be found. The suggested remedy was

appropriate in the case of a fraudulent conveyance but wholly inappropriate if the transferee was directly liable by operation of law as an unqualified consequence of the mere fact of a transfer.

We submit, therefore, that in these cases there were merely sales of assets, but that if for some purposes the transfers be considered as effecting mergers, they were not mergers having those characteristics which a merger must have to enable the transferee to deduct amortization of bond discount and expense with respect to bonds issued by the transferor. The Northern Power Company is a different taxpayer from the companies which issued the bonds. It is not entitled to the deduction which its affiliates might have claimed if they had redeemed the bonds; and as a separate entity it has sustained no loss measured by the unamortized bond discount and expense which it should be permitted to deduct as representative of any loss or expense it suffered.

The petitioner argues that to construe the statute and regulations as denying the deduction to a parent company which has purchased the assets of its affiliates and agreed to assume their liabilities is unjust, because there is no reasonable probability that any loss representative of the unamortized debt discount and expense has been compensated for. We do not concede that under the statutes and regulations the allowance of the deduction can be made

to depend upon whether or not there has been such compensation in fact. Much less may it be made to depend upon a mere presumption that there is a reasonable probability of uncompensated loss. There is no basis for a presumption that in arranging the terms of the transfer the possibility of such a loss has not been taken into account. The shifting of the economic effect of the loss was wholly within the control of the parties. The burden should be on the claimant to show that a loss deductible under the statute has actually fallen upon the transferee.

We submit that the effect is merely to deprive the parent of a benefit when it has borne no burden. In this case the Northern Power Company agreed to pay off the bonds of its affiliates, but it received assets in exchange for its obligation. The obligation is merely a part of the consideration paid for the assets, additional consideration being given through an exchange of stock for stock. It cannot be determined which corporation benefited by the transaction, but in any event the gain or loss from that transaction is not here involved.

It is true that if, instead of assuming the liability on the bonds, the Northern Power Company had paid cash to its affiliates to enable them to redeem their bonds, the affiliates would have been permitted to deduct the unamortized bond discount and expense. But in that situation the affiliates would

have been taxed on whatever gain was realized on the receipt of cash for assets. Thus they would have had the benefit of the deduction but would have had the burden of paying a tax on the sale.

CONCLUSION

The decisions of the court below should be affirmed.

Respectfully submitted.

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FEBRUARY, 1939.

APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 200. When used in this title—

* * * * * *

(d) The terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under section 212 or 232. The deductions and credits provided for in this title shall be taken for the taxable year in which "paid or accrued" or "paid or incurred", dependent upon the method of accounting upon the basis of which the net income is computed under section 212 or 232, unless in order to clearly reflect the income the deductions or credits should be taken as of a different period.

* * * * *

SEC. 212. (b) The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year, as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or if the method employed does not clearly reflect the income, the computation shall be made in accordance with such method as in the opinion of the Commissioner does clearly reflect the income. * * *

SEC. 232. In the case of a corporation subject to the tax imposed by section 230 the

term "net income" means the gross income as defined in section 233 less the deductions allowed by sections 234 and 206, and the net income shall be computed on the same basis as is provided in subdivisions (b) and (d) of section 212 or in section 226. In the case of a foreign corporation or of a corporation entitled to the benefits of section 262 the computation shall also be made in the manner provided in section 217.

SEC. 234. (a) In computing the net income of a corporation subject to the tax imposed by section 230 there shall be allowed as deductions:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity;

(2) All interest paid or accrued within the taxable year on its indebtedness, except on indebtedness incurred or continued to purchase or carry obligations or securities (other than obligations of the United States issued after September 24, 1917, and originally subscribed for by the taxpayer) the interest upon which is wholly exempt from taxation under this title;

* * * * *

(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise: * * *

* * * * *

Purdon's Pennsylvania Statutes, Annotated (Permanent Edition), Title 15:

SEC. 595. *Reduction of capital stock; change in value of shares; conveyance of franchise and property.*—Any corporation created under the provisions of this act, and any corporation of the classes named in the second section hereof, that is now in existence by virtue of any law of this Commonwealth, may reduce its capital stock or alter and change the par value of the shares thereof, by a vote of the stockholders taken in the manner and under the regulations prescribed in the eighteenth, nineteenth, twentieth, twenty-first and twenty-second sections of this act; and it shall be lawful for any corporation in the same manner to sell, assign, dispose of and convey to any corporation created under or accepting the provisions of this act, its franchises; and all its property, real, personal and mixed, and therafter such corporation shall cease to exist, and the said property and franchises not inconsistent with this act, shall thereafter be vested in the corporation so purchasing as aforesaid: *Provided,* That the returns required by said section shall not be filed in the office of the Secretary of the Commonwealth a certificate from the Auditor General of the Commonwealth until each and every corporation, so selling, assigning, disposing, and conveying such franchises and property, shall have filed with the Secretary of the Commonwealth, setting forth that all reports required by the Auditor General of the Commonwealth have been duly filed to the date of the proposed sale, assignment, disposition and conveyance; and that all taxes due the Commonwealth of Pennsylvania have been paid up to and including such date: * * *

Treasury Regulations 69, promulgated under the Revenue Act of 1926:

> ART. 545. *Sale and retirement of corporate bonds.*—(1) (*a*) If bonds are issued by a corporation at their face value, the corporation realizes no gain or loss. (*b*) If thereafter the corporation purchases and retires any of such bonds at a price in excess of the issuing price or face value, the excess of the purchase price over the issuing price or face value is a deductible expense for the taxable year. (See section 234 and article 563.) (*c*) If, however, the corporation purchases and retires any of such bonds at a price less than the issuing price or face value, the excess of the issuing price or face value over the purchase price is gain or income for the taxable year.
>
> (2) (*a*) If bonds are issued by a corporation at a premium, the net amount of such premium is gain or income which should be prorated or amortized over the life of the bonds. (*b*) If thereafter the corporation purchases and retires any of such bonds at a price in excess of the issuing price minus any amount of premium already returned as income, the excess of the purchase price over the issuing price minus any amount of premium already returned as income (or over the face value plus any amount of premium not yet returned as income) is a deductible expense for the taxable year. (*c*) If, however, the corporation purchases and retires any of such bonds at a price less than the issuing price minus any amount of premium already returned as income, the excess of the issuing price minus any amount of premium already returned as income (or of the face value plus any amount of premium not yet returned as income) over the

purchase price is gain or income for the taxable year.

(3) (*a*) If bonds are issued by a corporation at a discount, the net amount of such discount is deductible and should be prorated or amortized over the life of the bonds. (*b*) If thereafter the corporation purchases and retires any of such bonds at a price in excess of the issuing price plus any amount of discount already deducted, the excess of the purchase price over the issuing price plus any amount of discount already deducted (or over the face value minus any amount of discount not yet deducted) is a deductible expense for the taxable year. (*c*) If, however, the corporation purchases and retires any of such bonds at a price less than the issuing price plus any amount of discount already deducted, the excess of the issuing price plus any amount of discount already deducted (or of the face value minus any amount of discount not yet deducted) over the purchase price is gain or income for the taxable year.

ART. 563. *Sale of capital stock, bonds, and capital assets.*—A corporation sustains no deductible loss from the sale of its capital stock. (See article 543.) If it sells its bonds at a discount, the amount of such discount is treated in the same way as interest paid, and if it retires its bonds at a price in excess of the issuing price, such excess may usually be deducted as expense. (See article 545.) Any loss sustained by a corporation upon the sale of its capital assets, computed as provided in sections 202–204 and articles 1561–1603, subject to the limitation provided in section 234 (a) (4) as to the purchase and sale of stock or securities, is deductible.

U. S. GOVERNMENT PRINTING OFFICE: 1939

SUPREME COURT OF THE UNITED STATES.

Nos. 492 and 493.—October Term, 1938.

General Gas and Electric Corporation, Petitioner, *vs.* Commissioner of Internal Revenue.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[April 3, 1939.]

Mr. Justice Roberts delivered the opinion of the Court.

These are companion cases to Nos. 486 and 487 and involve the same question. The Circuit Court of Appeals held that conveyances by subsidiaries to the taxpayer, consummated under the Act of April 29, 1874, did not constitute mergers so as to authorize the taxpayer to take a deduction for unamortized bond discount and expense in respect of bonds issued by the subsidiaries prior to the conveyance.

For reasons given in Nos. 486 and 487 the judgments must be reversed.

So ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.